Calendar No. 853

100TH CONGRESS
2d Session

SENATE

REPORT
100-439

VETERANS' BENEFITS AND PROGRAMS IMPROVEMENT ACT OF 1988

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2011

together with

ADDITIONAL VIEWS

AUGUST 1, 1988.—Ordered to be printed

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VETERANS' BENEFITS AND PROGRAMS IMPROVEMENT ACT OF 1988

AUGUST 1, 1988.—Ordered to be printed

Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2011]

The Committee on Veterans' Affairs, to which was referred the bill (S. 2011) to increase the rates of Veterans' Administration compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows:

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 1988".

[SEC. 2. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

[(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall, as provided in paragraph (2), increase, effective December 1, 1988, the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation.

[(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title I of the Veterans' Compensation Cost-of-Living Adjustment Act of 1987 (Public Law 100-277), the Administrator shall further increase such rates and limitations, as in effect on November 30, 1988, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1988, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

[(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

[(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

[(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1989, the Administrator shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.]

and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits and Programs Improvement Act of 1988".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND RELATED BENEFITS

Sec. 101. Disability compensation and dependency and indemnity compensation cost-of-living adjustments.
Sec. 102. Expansion of clothing allowance.

TITLE II—AGENT ORANGE AND RELATED PROVISIONS

Sec. 201. Short title.
Sec. 202. Interim period for award of benefits for Vietnam veterans with non-Hodgkin's lymphoma.
Sec. 203. Presumptive service connection of chloracne for Vietnam veterans.
Sec. 204. Extension of health-care eligibility based on Agent Orange or radiation exposure.
Sec. 205. Income exclusion of certain payments for purposes of eligibility for certain needs-based veterans' benefits.
Sec. 206. Agent orange scientific evidence review.
Sec. 207. Modification of procedures for consideration of certain studies.

TITLE III—EDUCATION AND REHABILITATION

PART A—REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

Sec. 301. Training and work experience without pay in State and local government agencies.
Sec. 302. Removal of bar to use of for-profit organizations for employment assistance and independent living programs.
Sec. 303. Extension of temporary programs of trial work periods and vocational-rehabilitation evaluations.

PART B—EDUCATION PROGRAMS

Subpart 1—Montgomery GI Bill Provisions

Sec. 311. Eligibility for individuals discharged for pre-service medical conditions or due to reductions in force.
Sec. 312. Opportunity for enrollment for certain active-duty nonparticipants.
Sec. 313. Secondary school diploma requirements.
Sec. 314. Choice of benefits for certain reservists.

Subpart 2—Provisions Relating to Montgomery GI Bill and Certain Other Programs

Sec. 321. Refresher, remedial, and deficiency courses.
Sec. 322. Tutorial assistance.
Sec. 323. Cooperative training.
Sec. 324. Tolling of delimiting periods by reason of drug or alcohol conditions.

Subpart 3—Administrative and Miscellaneous Provisions

Sec. 331. Course withdrawals.
Sec. 332. Funding of educational and vocational counseling services.
Sec. 333. Measurement of full-time study.
Sec. 334. Educational assistance for certain incarcerated veterans under the Post-Vietnam Era Veterans' Educational Assistance Program.
Sec. 335. Veterans' Advisory Committee on Education.
Sec. 336. Vietnam-era GI Bill eligibility for certain service academy graduates.
Sec. 337. Repeal of expired program of accelerated-payment loans.

Part C—Non-Service-Connected Disability Pension Recipient's Vocational Training Program

Sec. 341. Extension of program period.

TITLE IV—MISCELLANEOUS BENEFITS PROVISIONS

Part A—Insurance Programs

Sec. 401. Payment of interest on settlements.
Sec. 402. Adjustment of discount rates for advance payment of premiums.

Part B—State Cemetery Construction Grant Program

Sec. 411. Extension of authorization of appropriations.

Part C—Home Loan Guaranty Program

Sec. 421. Waiver of indebtedness.

TITLE V—BOARD OF VETERANS' APPEALS

Sec. 501. Independence of the Chairman.
Sec. 502. Timeliness of dispositions.
Sec. 503. Appointment and removal of the Chairman and members.
Sec. 504. Salary of Chairman.
Sec. 505. Reports on Board activities and resources.
Sec. 506. Prohibition of bonuses for members.
Sec. 507. Voting by the Board.
Sec. 508. Decisions of the Board.
Sec. 509. Reopening of disallowed claims.
Sec. 510. Notice and content of decisions.
Sec. 511. Prohibition against presumption of agreement.
Sec. 512. Medical opinions.
Sec. 513. Adjudication procedures.
Sec. 514. Notices of procedures.
Sec. 515. Effective date of awards in reopened cases.
Sec. 516. Attorneys' fees.

TITLE VI—HEALTH CARE

Part A—Programs Relating to Post-Traumatic Stress Disorder and Mental Health

Sec. 601. Care for Vietnam veterans with service-related post-traumatic stress disorder.
Sec. 602. Special Committee on Post-Traumatic Stress Disorder.
Sec. 603. Study of psychological problems among Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific Islander (including American Samoan Native), and Alaska Native Vietnam veterans.
Sec. 604. Mental illness research, education, and clinical centers.
Sec. 605. Readjustment counseling eligibility extension.
Sec. 606. Community-based alcohol and drug treatment services.

Part B—Other Health-Care Programs

Sec. 611. Respite care.
Sec. 612. Contracts and grants for care in the Philippines.
Sec. 613. Sharing of specialized medical resources.
Sec. 614. State Home construction grants.
Sec. 615. Pilot programs for providing assistive animals.

Part C—Health-Care Personnel

Sec. 621. Appointment of Veterans' Administration-trained personnel.
Sec. 622. Approval of special rates of pay.
Sec. 623. Health professional scholarship awards.
Sec. 624. Assistance to health-personnel educational institutions.
Sec. 625. Pilot program of pay and personnel management practices.
Sec. 626. Conversion of non-physician medical center directors to the Senior Executive Service.
Sec. 627. Disciplinary actions and grievances.

TITLE VII—MISCELLANEOUS

Sec. 701. Definition of Vietnam era.
Sec. 702. Extension of authority for regional office in the Philippines.
Sec. 703. Use of Internal Revenue Service and Social Security Administration data for income verification.
Sec. 704. Procurement through local contracts.
Sec. 705. Technical corrections.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND RELATED BENEFITS

SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION COST-OF-LIVING ADJUSTMENTS.

(a) In General.—(1) The Administrator of Veterans' Affairs shall, as provided in paragraph (2), increase, effective December 1, 1988, the rates of and limitations on Veterans' Administration.

(2)(A) In the case of disability compensation and dependency and indemnity compensation each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title I of the Veterans' Compensation Cost-of-Living Adjustment Act of 1987 (Public Law 100–227), the Administrator shall further increase such rates and limitations, as in effect on November 30, 1988, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1987, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts not in even dollar amounts shall be rounded to the next lower dollar amount.

(b) Special Rule.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) Publication Requirement.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1989, the Administrator shall publish in the *Federal Register* the rates and limitations being increased under this section and the rates and limitations as so increased.

SEC. 102. EXPANSION OF CLOTHING ALLOWANCE.

The text of section 362 is amended to read as follows:

"The Administrator, under regulations which the Administrator shall prescribe, shall pay a clothing allowance of $380 per year to each veteran who because of disability which is compensable under this chapter—

"(A) wears or uses prosthetic or orthopedic appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such veteran, or

"(B) uses medication which (i) has been prescribed for a service-connected skin condition, and (ii) the Administrator determines stains or otherwise damages such veteran's clothing.".

TITLE II—AGENT ORANGE AND RELATED PROVISIONS

SEC. 201. SHORT TITLE.

This title may be cited as the "Agent Orange Exposure Benefits Act of 1988".

SEC. 202. INTERIM PERIOD FOR AWARD OF BENEFITS FOR VIETNAM VETERANS WITH NON-HODGKIN'S LYMPHOMA.

(a) Presumptive Disability and Death Benefits.—(1) In the case of a veteran—

(A) who served in the active military, naval, or air service in the Republic of Vietnam during the Vietnam era; and

(B) who has non-Hodgkin's lymphoma,

the Administrator shall, except as provided in subsection (b), pay a monthly disability benefit to the veteran in accordance with this section for any disability resulting from that disease.

(2) If a veteran described in paragraph (1) dies from non-Hodgkin's lymphoma, the Administrator shall pay a monthly death benefit to the survivors of the veteran in accordance with this section.

(b) Exceptions.—Benefits may not be paid under this section with respect to non-Hodgkin's lymphoma occurring in a veteran—

(1) where there is affirmative evidence that such disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era; or

(2) where there is affirmative evidence to establish than an intercurrent injury or disease which is a recognized cause of such disease was suffered by the veteran between the date of the veteran's most recent departure from the Re-

public of Vietnam during active military, naval, or air service and the onset of non-Hodgkin's lymphoma.

(c) Benefit Amounts.—(1) A disability benefit payable to a veteran under this section for a disability resulting from non-Hodgkin's lymphoma shall be paid at the rate at which compensation would be payable under chapter 11 of title 38, United States Code, to that veteran for the disability resulting from that disease if the disability were determined to be service connected.

(2) A death benefit payable under this section to the survivors of a veteran shall be paid to such survivors based upon the eligibility requirements (other than the requirement that the death be the result of a service-connected or compensable disability) for, and at the rates that are applicable to, dependency and indemnity compensation under chapter 13 of that title.

(d) Non-Duplication of Benefits.—A benefit may not be paid under this section with respect to a disability resulting from non-Hodgkin's lymphoma or the death of a veteran for any month for which compensation is payable to the veteran for that disability under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of that title.

(e) Treatment of Disability or Death as Service Connected Except for Compensation and Pension Purposes.—A disability or death from non-Hodgkin's lymphoma establishing for a disability or death benefit under this section shall be treated for purposes of all laws of the United States (other than the provisions chapters 11 other than sections 357, 358, and 361) of title 38, United States Code, and chapter 13 of such title) as if such disease were service connected. The receipt of a disability benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were disability compensation under chapter 11 of such title, and the receipt of a death benefit under this section shall be treated for purposes of all other laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of title 38, United States Code.

(f) Definitions.—For the purposes of this section, the terms, "Administrator", "veteran", "service-connected", and "active military, naval, or air services" have the meanings given those terms in paragraphs (1), (2), (16), and (24), respectively, of section 101 of title 38, United States Code.

(g) Effective Date.—The amendments made by this section shall take effect on January 15, 1989. No benefit may be paid for any period before such date by reason of the enactment of this Act.

(h) Expiration of Interim Period.—The provisions of this section shall not apply with respect to any claim for benefits filed more than six months after the Centers for Disease Control submits to the Administrator its report on the results of the Selected Cancers Study conducted pursuant to section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note).

(i) Administrative Suspension of Provisions.—The Administrator may suspend the provisions of this section with respect to claims submitted after the date on which the Administrator publishes in the Federal Register a notice of the suspension if the Administrator finds, based on the results of such Selected Cancers Study and the reports submitted, pursuant to section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. section 219 note), as amended by section 207 of this Act, by the panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to dioxin and by the Director of the Office of Technology Assessment on the Selected Cancers Study that the results of such study, together with any other scientific evidence then available, do not support an association between non-Hodgkin's lymphoma and service in the Republic of Vietnam during the Vietnam era.

SEC. 203. PRESUMPTIVE SERVICE CONNECTION OF CHLORACNE.

Section 312 is amended by adding at the end the following new subsection:

"(d) For the purposes of section 310 of this title and subject to the provisions of section 313 of this title, in the case of a veteran who served in the active military, naval, or air service in the Republic of Vietnam during the Vietnam era, the disease of chloracne, where it or another acneform skin disease consistent with chloracne became manifest to a degree of 10 percent or more within one year after the last date on which the veteran served in the Republic of Vietnam during such era, shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.".

SEC. 204. EXTENSION OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR IONIZING RADIATION EXPOSURE.

Section 610(e)(3) is amended by striking out "September 30, 1989" and inserting in lieu thereof "December 31, 1990".

SEC. 205. INCOME EXCLUSION OF CERTAIN PAYMENTS FOR PURPOSES OF ELIGIBILITY FOR CERTAIN NEEDS-BASED VETERANS' BENEFITS.

(a) Parents' Dependency and Indemnity Compensation.—Section 415(f)(1) is amended—

(1) in clause (M), by striking out the period at the end and inserting in lieu thereof a semicolon; and

(2) by adding at the end the following new clause:

"(N) payments which (i) are received in any twelve-month period beginning on December 1 in settlement of, or as the result of a judgment in, litigation based on a death alleged to have been incurred as a result of events that occurred during the active-duty service of the veteran concerned, and (ii) do not exceed the maximum annual rate payable under section 521 (b), (c), or (f) of this title for a veteran with the same marital and parental status as the individual concerned.".

(b) Pension and Health Care.—Section 503(a) is amended—

(1) in paragraph (9), by striking out "and" at the end;

(2) in paragraph (10), by striking out the period at the end and inserting in lieu thereof "; and"; and

(2) by adding at the end the following new paragraph:

"(11) payments which (i) are received in any twelve-month period beginning on December 1 in settlement of, or as the result of a judgment in, litigation based on a disability or death alleged to have been incurred as a result of events that occurred during the active-duty service of the veteran concerned, and (ii) do not exceed the maximum annual rate payable under section 521 (b), (c), or (f) of this title for a veteran with the same marital and parental status as the individual concerned.".

SEC. 206. AGENT ORANGE SCIENTIFIC EVIDENCE REVIEW.

(a) Contract for Review.—(1) Within 60 days after the date of the enactment of this section, the Administrator of Veterans' Affairs is directed to conclude negotiations for and enter into an agreement with the National Academy of Sciences under which the Academy will conduct a review of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange and its component compounds and prepare the comprehensive report described in subsection (b). The Academy will conduct the review and prepare such report under an arrangement under which the actual expenses incurred by the Academy in conducting the review will be paid by the Administrator.

(2)(A) If the National Academy of Sciences is not willing to conduct the review and prepare the report described in paragraph (1) under the type of arrangement described in such paragraph, the Administrator shall enter into a similar arrangement with an appropriate nonprofit private scientific entity for such purposes.

(B) The Administrator may not obligate any funds under such an arrangement with a nonprofit private scientific entity as described in subparagraph (A) until specifically authorized to do so by a law enacted after the date on which this section is enacted.

(b) Report.—Not later than October 1, 1989, the Administrator shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives and make available to the public a comprehensive report prepared pursuant to an arrangement described in subsection (a)—

(1) describing the review conducted under subsection (a); and

(2) containing a statement of the conclusions of the Academy or such other entity as conducts the review, based on such review, as to the weight of the evidence on the human health effects of exposure to Agent Orange and its component compounds.

(c) Authorization of Appropriations.—There is authorized to be appropriated for carrying out a study conducted pursuant to subsection (a) of this section $1,000,000 for fiscal year 1989 to remain available until expended.

(d) Availability of Contract Authority.—The authority provided in this section to enter into a contract shall be effective for a fiscal year to the extent or in such amount as is provided for in an appropriation Act.

SEC. 207. MODIFICATION OF PROCEDURES FOR CONSIDERATION OF CERTAIN STUDIES.

(a) EVALUATION AND CONSIDERATION OF PUBLIC LAW 96-151 VIETNAM VETERANS EPIDEMIOLOGICAL STUDIES.—Section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979 (38 U.S.C. 219 note) is amended—

(1) by redesignating subsections (c) and (d) as (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

"(c)(1) Not later than 60 days after the publication of any report by, or at the request of, the entity responsible for carrying out the study under section (a)(1)(A) setting forth results and findings from such study—

"(A) the panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to dioxin, established pursuant to section 6(d)(2) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542; 38 U.S.C. 354 note), shall review and evaluate such results and findings, and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth such panel's evaluation of such results; and

"(B) the Director shall review and evaluate such results and findings and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth the Director's evaluation of such results.

"(2)(A) Not later than 60 days after receiving both of the reports under paragraph (1), the Administrator, after consideration of the evaluations set forth in such reports, the comments and recommendations, if any, included therein, and any other available pertinent scientific information, shall evaluate the need for any amendments to regulations prescribed pursuant to section 5 of such Act and shall advise the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's decision, and the reasons therefor, regarding the need for any such amendments.

"(B) To the extent that the Administrator determines under subparagraph (A) that any amendments to such regulations are needed, the Administrator, not later than 120 days after receiving the reports under paragraph (1), shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.".

(b) EVALUATION AND CONSIDERATION OF OTHER VIETNAM-VETERAN RELATED STUDIES.—Section 6 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542; 38 U.S.C. 354 note) is amended—

(1) by redesignating subsections (e), (f), and (g) as (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following new subsection (e):

"(e)(1) Not later than 60 days after receiving a report from the Council under subsection (d)(3) recommending any amendments to the regulations prescribed pursuant to section 5, the Administrator, after consideration of the findings and evaluations set forth in such report, the comments and recommendations, if any, included therein, and any other available pertinent scientific information, shall evaluate the need for any such amendments and shall advise the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's decision, and the reasons therefor, regarding the need for any such amendments.

"(2) To the extent that the Administrator determines under paragraph (1) that any amendments to such regulations are needed, the Administrator, not later than 120 days after receiving such report, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.".

(c) EVALUATION AND CONSIDERATION OF PUBLIC LAW 98-160 IONIZING RADIATION-EXPOSED VETERANS EPIDEMIOLOGICAL STUDY.—Section 601(a) of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 38 U.S.C. 219 note) is amended—

(1) by redesignating paragraphs (6) and (7) as (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following new paragraph:

"(6)(A) Not later than 60 days after the publication of any report by, or at the request of, the entity responsible for carrying out the study under section (a)(1)(A) setting forth results and findings from such study—

"(i) the panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to ionizing radiation, established pursuant to section 6(d)(2) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542; 38 U.S.C. 354 note), shall review and evaluate such results and findings, and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth such panel's evaluation of such results; and

"(ii) the Director shall review and evaluate such results and findings and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth the Director's evaluation of such results.

"(B)(i) Not later than 60 days after receiving both of the reports under subparagraph (A), the Administrator, after consideration of the evaluations set forth in such reports, the comments and recommendations, if any, included therein, and any other available pertinent scientific information, shall evaluate the need for any amendments to regulations prescribed pursuant to section 5 of such Act and shall advise the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's decision, and the reasons therefor, regarding the need for any such amendments.

"(ii) To the extent that the Administrator determines under division (i) that any amendments to such regulations are needed, the Administrator, not later than 120 days after receiving the reports under subparagraph (A), shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.".

TITLE III—EDUCATION AND REHABILITATION

PART A—REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

SEC. 301. TRAINING AND WORK EXPERIENCE WITHOUT PAY IN STATE AND LOCAL GOVERNMENT AGENCIES.

Section 1515 is amended—

(1) in subsection (a)(1), by inserting ", or of any State or local government agency receiving Federal financial assistance," after "Administration)".

(2) in subsection (b)—

(A) in paragraph (1), by inserting "at a Federal agency" after "section"; and

(B) by striking out paragraph (3) and inserting in lieu thereof:

"(3) Use of the facilities of a State or local government agency under subsection (a)(1) of this section or use of facilities and services under subsection (a)(4) of this section, shall be procured through contract, agreement, or other cooperative arrangement.

"(4) The Administrator shall prescribe regulations providing for the monitoring of training and work experiences provided under such subsection (a)(1) at State or local government agencies and otherwise ensuring that such training or work experience is in the best interest of the veteran and the Federal Government.".

SEC. 302. REMOVAL OF BAR TO USE OF FOR-PROFIT ORGANIZATIONS FOR EMPLOYMENT ASSISTANCE AND INDEPENDENT LIVING PROGRAMS.

(a) EMPLOYMENT ASSISTANCE.—Section 1517(a)(2)(C) is amended—

(1) by striking out "and" at the end of subclause (iii); and

(2) by inserting before the period at the end", and (v) any for-profit entity in a case in which the Administrator has determined that services necessary to provide such assistance are available from such entity and that comparably effective services are not available, or cannot be obtained cost-effectively, from the entities described in subclauses (i) through (iv) of this clause.".

(b) INDEPENDENT LIVING PROGRAMS.—Section 1520(a) is amended—

(1) in paragraph (1), by striking out "public" and all that follows through "organizations" and inserting in lieu thereof "entities described in paragraph (7) of this subsection"; and

(2) by adding at the end the following new paragraph:

"(7) Entities described in this paragraph are (A) public or nonprofit agencies or organizations, and (B) for-profit entities in cases in which the Administrator determines that services comparable in effectiveness to services available from such an entity are not available, or cannot be obtained cost effectively from, public or nonprofit agencies or through facilities of the Department of Medicine and Surgery.".

SEC. 303. EXTENSION OF TEMPORARY PROGRAMS OF TRIAL WORK PERIODS AND VOCATIONAL-REHABILITATION EVALUATIONS.

Section 363(a)(2)(B) is amended by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1990".

PART B—EDUCATION PROGRAMS

Subpart 1—Montgomery GI Bill Provisions

SEC. 311. ELIGIBILITY FOR INDIVIDUALS DISCHARGED FOR PRE-SERVICE MEDICAL CONDITIONS OR DUE TO REDUCTIONS IN FORCE.

(a) PROVISION OF ELIGIBILITY.—Subchapter II of chapter 30 is amended by adding at the end the following new section:

"§ 1417. Limited entitlement for certain veterans

"(a) A veteran described in subsection (b) of this section is entitled to one month of basic educational assistance under this chapter (or the equivalent thereof in part-time educational assistance) for each full month of active duty served by such individual after the date of the beginning of the period for which the individual's basic pay is reduced under section 1411(b), 1412(c), or 1418(c) of this title.

"(b) A veteran described in this subsection is a veteran—

"(1) who is not otherwise entitled to basic educational assistance under this chapter;

"(2) whose basic pay was reduced in accordance with section 1411(b), 1412(c), or 1418(c) of this title;

"(3) who, before completion of the service described in section 1411(a)(1)(A), 1412(a)(1)(A), or 1418(b)(3) of this title, as applicable—

"(A) was discharged or released from service on active duty or in the Selected Reserve for a medical condition which preexisted such service and which the Administrator determines is not service connected, or

"(B) was involuntarily discharged or released from such service for the convenience of the Government as a result of a reduction in force; and

"(4) who, but for being discharged or released before completing such service, would have been entitled to basic educational assistance under this chapter.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect—

(1) as of July 1, 1985, with respect to veterans described in subsection (b)(3)(A) of section 1417 of title 38, United States Code, as added by such amendment; and

(2) as of October 1, 1987, with respect to veterans described in subsection (b)(3)(B) of such section.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 30 is amended by inserting after the item relating to section 1416 the following new item:

"1417. Limited entitlement for certain veterans.".

SEC. 312. OPPORTUNITY FOR ENROLLMENT FOR CERTAIN ACTIVE-DUTY NON-PARTICIPANTS.

(a) IN GENERAL.—Subchapter II of chapter 30 is further amended by adding at the end (after the section added by section 311(a)) the following new section:

"§ 1418. Opportunity for certain active-duty personnel to withdraw election not to enroll

"(a) Notwithstanding any other provision of this chapter, during the 120-day period during fiscal 1989 selected by the Secretary of Defense (hereinafter referred to as the 'open period'), individuals who entered on active duty during the period beginning July 1, 1985, and ending June 30, 1988, and are serving on active duty during the open period shall have the opportunity in accordance with this section to withdraw an election made under section 1411(b) or 1412(c) of this title not to become entitled to educational assistance under this chapter.

"(b) An individual described in section 1411(a)(1)(A) or section 1412(a)(1)(A) of this title who made an election under section 1411(b) or 1412(c) of this title and who—

"(1) while serving on active duty during the open period, makes a withdrawal of such as election;

"(2) at the time of such withdrawal of election accepts an obligation to serve on active duty for a period of at least two years in addition to any period of active duty which, at the beginning of the open period, such individual was obligated to serve;

"(3)(A) serves such additional period of two years of obligated active-duty service;

"(B) after beginning to serve, but before completing, such additional period is discharged or released from active duty for a service-connected disability or for hardship; or

"(C) is discharged or released for the convenience of the Government after completing not less than 20 months of such additional period;

"(4) before completion of the service described in clause (3) of this subsection, has received a secondary school diploma (or an equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary); and

"(5) after completion of such service—

"(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

"(B) continues on active duty; or

"(C) is released from active duty for further service in a reserve component of the Amred Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

"(c) The basic pay of an individual withdrawing under subsection (b)(1) of this section an election under section 14119b) or 1412(c) of this title shall, for each of the first twelve months of the period of active duty for which the individual becomes obligated to serve as described in subsection (b)(2) of this section be reduced by $100.".

(b) Conforming Amendments.—(1) Section 1413 is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c)(1) Subject to section 1795 of this title and except as provided in paragraph (2) of this subsection, each individual entitled to basic educational assistance under section 1418 of this title is entitled to 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance).

"(2) An individual described in section 1418(b)(3)(B) of this title is entitled to one month of educational assistance for each month of active duty served by the individual after the date of the beginning of the period for which in individual's basic pay is reduced under section 1418(c) of this title."

(2) Section 1416 is amended by adding as the end the following new subsection:

"(c) A member of the Armed Forces who—

"(1) completes at least two years of service on active duty after June 30, 1985, including the first twelve months of the additional period of active duty described in section 1418(b)(2) of this title;

"(2) after such service continues on active duty without a break in service; and

"(3) but for section 1418(b)(3)(A) of this title would be entitled to basic educational assistance under this chapter,

may receive such assistance for enrollment in an approved program of education while continuing to perform the service described in such section 1418(b)(3)(A).".

(3) Section 1421(a) is amended—

(A) in the matter preceding clause (1), by inserting "or 1418" after "section 1411"; and

(B) in clause (1), by inserting "or 1418(b)(3)" after "section 1411(a)(1)".

(c) Clerical Amendment.—The table of sections at the beginning of chapter 30 is amended by inserting after the item relating to section 1417 (as added by section 311(b) of this Act) the following new item: "1418. Opportunity for certain active-duty personnel to withdraw election not to enroll.".

SEC. 313. SECONDARY SCHOOL DIPLOMA REQUIREMENTS.

(a) Active-Duty Participants.—Sections 1411(a) and 1412(a) are each amended by striking out clause (2) and inserting in lieu thereof the following:

"(2) who received a secondary school diploma (or the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary) before (A) in the case of an individual to whom clause (1)(A) of this subsection applies, completing the service described in such clause, or (B) in the case of an individual to whom clause (1)(B) of this subsection applies, initiating pursuit of a program of education with educational assistance under this chapter; and".

(b) Selected Reserve Participants—Section 2132(a)(2) of title 10, United States Code, is amended by striking out "(or an equivalency certificate)" and inserting in lieu thereof "(or an equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary)".

SEC. 314. CHOICE OF BENEFITS FOR CERTAIN RESERVISTS.

Section 1412 is further amended—

(1) in subsection (b)(1), by striking out all after "Selected Reserve" and inserting in lieu thereof "(A) for a service-connected disability, (B) for hardship, or (C)

in the case of an individual discharged or released after completing three and one-half years of such service, for the convenience of the Government.".

(2) by adding at the end the following new subsection:

"(e)(1) An individual described in subsection (b)(1)(A) of this section may elect entitlement to basic educational assistance under section 1411 of this title, based on an initial obligated period of active duty of two years, in lieu of entitlement to assistance under this section.

"(2) An individual who makes the election described in paragraph (1) of this subsection shall, for all purposes of this chapter, be considered entitled to educational assistance solely under section 1411 of this title. Such an election is irrevocable.".

Subpart 2—Provisions Relating to Montgomery GI Bill and Certain Other Programs

SEC. 321. REFRESHER, REMEDIAL, AND DEFICIENCY COURSES.

(a) MONTGOMERY GI BILL.—(1) Section 1434(a) is amended—

(A) by inserting "(1)" before "Except";

(B) by designating the second sentence as paragraph (2) thereof;

(C) in paragraph (2) (as so designated) by striking out "those provisions" and inserting in lieu thereof "the provisions of the sections enumerated in paragraph (1) of this subsection"; and

(D) adding at the end the following new paragraph:

"(3)(A) The Administrator may, without regard to the application to this chapter of so much of the provisions of section 1671 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is 'already qualified', and pursuant to such regulations as the Administrator shall prescribe, approve the enrollment of such individual in a deficiency, remedial, or refresher course or courses offered by an appropriate educational institution and required for, or preparatory to, the pursuit of an approved program of education.

"(B) Educational assistance under this chapter shall be provided without charge to entitlement for the first five months of full-time pursuit of a program consisting of such course or courses.".

(2) Section 2136(b) of title 10, United States Code, is amended—

(A) by inserting "(1)" before "Except";

(B) in paragraph (1) (as redesignated by clause (1)), by striking out "and 1683" and inserting in lieu thereof "1683, and 1691(a)(2)"; and

(C) adding at the end the following new paragraph—

"(2) Educational assistance provided under this chapter pursuant to the provisions of section 1691(a)(2) of title 38 shall be provided without charge to entitlement for the first five months of full-time pursuit consisting of such course or courses."

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 1641 is amended—

(1) in subsection (a) by—

(A) inserting "(1)" after "(a)"; and

(B) by adding at the end following new paragraph:

"(2)(A) The Administrator may, without regard to the application to this chapter of so much of the provisions of section 1671 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is 'already qualified', and pursuant to such regulations as the Administrator shall prescribe, approve the enrollment of such individual in a deficiency, remedial, or refresher course or courses offered by an appropriate educational institution and required for, or preparatory to, the pursuit of an approved program of education.

"(B) Educational assistance under this chapter for the first five months of full-time pursuit of a program consisting of such course or courses shall be provided without charge to entitlement and paid from the Veterans' Administration appropriation account for readjustment benefits."; and

(2) in subsection (b) by striking out "1691(a)(1)" and inserting in lieu thereof "1691(a)".

(c) SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM.—Subsection (a) of section 1733 is amended to read as follows:

"(a)(1) The Administrator may approve the enrollment of any eligible person under this chapter in any appropriate course or courses as may be approved for an eligible veteran under section 1691(a) (if pursued in a State) of this title.".

"(2) Educational assistance under this chapter for the first five months of full-time pursuit of a program consisting of such course or courses shall be provided without charge to entitlement.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on September 30, 1989.

(e) Report.—Not later than February 1, 1991, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the use of educational assistance under the amendments made by this section with and without charge to entitlement during fiscal years 1989 and 1990.

SEC. 322. TUTORIAL ASSISTANCE.

(a)(1) Assistance Under the Montgomery GI Bill Active Duty.—Subchapter II of chapter 30 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 1419. Tutorial assistance

"(a) An individual entitled to an educational assistance allowance under this chapter shall also be entitled to the benefits provided an eligible veteran under section 1692 of this title.

"(b) The individual's period of entitlement under this chapter shall be charged with one-half month for each $300 of such benefits received.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1416 the following new item:

"1419. Tutorial assistance.".

(b) Assistance Under the Montgomery GI Bill Selected Reserve.—Section 2131(c) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out "Educational" and inserting in lieu thereof "Except as provided in paragraph (3) of this subsection, educational"; and

(2) by adding at the end the following new paragraph:

"(3) Notwithstanding the provisions of paragraph (1) of this subsection, a person entitled to educational assistance under this chapter shall also be entitled to tutorial assistance under this chapter in the same manner and amount, to the same extent, and under the same conditions as provided under section 1692 of title 38, except that such person's period of entitlement under this chapter shall be charged with one-half month for each $140 of tutorial assistance received.".

(c) Post-Vietnam Era Educational Assistance Program.—(1) Subchapter III of chapter 32 of title 38, United States Code, is amended by inserting after section 1633 the following new section:

"§ 1634. Tutorial assistance

"(a)(1) An individual entitled to benefits under this chapter shall also be entitled to the benefits provided an eligible veteran under section 1692 of this title.

"(2) The individual's period of entitlement under this chapter shall be changed with one-half month for each $225 of such benefits received.

"(b) Payments of benefits under this section shall be made out of funds available for payments under such section 1692.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1633 the following new item:

"1634. Tutorial assistance.".

(d) Increase in Maximum Tutorial Assistance Payments.—(1) Section 1692(b) of title 38, United States Code, is amended by striking out "$84" and "$1,008" and inserting in lieu thereof "$100" and "$1,200", respectively.

(2)(A) The heading of section 1692 of such title as amended to read as follows:

"§ 1692. Tutorial assistance".

(B) The item relating to section 1692 in the table of sections at the beginning of chapter 34 is amended to read as follows:

"1692. Tutorial assistance.".

(e) Effective Date.—The amendments made by this section shall take effect on October 1, 1988.

SEC. 323. COOPERATIVE TRAINING.

(a) Montgomery GI Bill.—(1) Section 1402(3)(B) is amended—

(A) by inserting "(i)" after "includes"; and

(B) By inserting before the period at the end ", and (ii) in the case of an individual who is not serving on active duty, a cooperative program (as defined in section 1682(a)(2) of this title)".

(2) Section 1432 is amended by adding at the end the following new subsection:

"(d)(1) The amount of the monthly basic educational assistance allowance payable to an individual pursuing a cooperative program under this chapter shall be 80 percent of the monthly allowance otherwise payable to such individual under section 1415 of this title.

"(2) For each month that an individual is paid a monthly educational assistance allowance for pursuit of a cooperative program under this chapter, the individual's entitlement under this chapter shall be charged at the rate of 80 percent of a month.".

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—(1) Section 1602(2)(B) is amended—

(A) by inserting "(i)" after "includes"; and

(B) by inserting before the period at the end ", and (ii) in the case of an individual who is not serving on active duty, a cooperative program (as defined in section 1682(a)(2) of this title)".

(2) Section 1631 is amended by adding at the end the following new subsection:

"(d)(1) The amount of the monthly benefit payment to an individual pursuing a cooperative program under this chapter shall be 80 percent of the monthly benefit otherwise payable to such individual (computed on the basis of the formula provided in subsection (a)(2) of this section).

"(2) For each month that an individual is paid a monthly benefit payment for pursuit of a cooperative program under this chapter, the individual's entitlement under this chapter shall be charged at the rate 80 percent of a month.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1988.

SEC. 324. TOLLING OF DELIMITING PERIODS BY REASON OF DRUG OR ALCOHOL CONDITIONS.

(a) EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE ALL-VOLUNTEER FORCE.—Section 1431(d) is amended—

(1) in clause (1), by inserting, "or because of a condition (and under the circumstances) described in paragraph (2) of this subsection" after "misconduct";

(2) in clause (2), by redesignating subclauses (A) and (B) as subclauses (i) and (ii);

(3) by redesignating clauses (1) and (2) as clauses (A) and (B);

(4) by inserting "(1)" before "In"; and

(5) by inserting at the end the following new paragraph:

"(2)(A) A condition referred to in paragraph (1)(A) of this subsection is an alcohol or drug dependence or abuse condition of an eligible individual in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) such individual has received recognized treatment or participated in a program of rehabiliation for the condition, and

"(ii) the condition is sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (1)(B) of this subsection, an eligible individual's application for an extension of the ten-year period for use of entitlement under this chapter because of such a condition may be granted if such individual files an application for the extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) The period of time during which, based on the existence of such a condition, such ten-year period does not run shall not exceed the lesser of—

"(I) the period during which the eligible individual was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such individual demonstrates, to the satisfaction of the Administrator, that such individual was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the 10-year period with respect to the individual will again begin running on whichever of the following first occurs:

"(I) The first day, following the condition becoming sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

"(II) The day after the fourth year of the extension.".

(b) PROGRAMS OF REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES.—Section 1503(b)(1) is amended—

(1) by inserting "(A)" before "In";

(2) in subparagraph (A), as so redesignated, by inserting "(other than a condition described in subparagraph (B)(ii) of this paragraph)" after "medical condition"; and

(3) by inserting at the end the following new subparagraph:

"(B)(i) Subject to clause (iii) and (iv) of this subparagraph, in any case in which the Administrator determines, under regulations which the Administrator shall prescribe, that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a condition described in clause (ii) of this subparagraph made it infeasible for the veteran to participate in such a program, the 12-year period of eligibility shall not run during the period of time that the veteran was so prevented from participating in such a program.

"(ii) A condition referred to in clause (i) of this subparagraph is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(I) the veteran has received recognized treatment or has participated in a program of rehabilitation for the condition, and

"(II) the condition is sufficiently under control to enable the veteran to participate in a vocational rehabilitation program under this chapter.

"(iii) Clause (i) of this subparagraph applies only if the veteran has filed an application under this paragraph not later than one year after whichever of the following last occurs:

"(I) The last date of the period of eligibility otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to clause (i) of this subparagraph are published in the Federal Register.

"(iv) The period of time during which, pursuant to clause (i) of this subparagraph, the twelve-year period of eligibility does not run shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for a condition described in clause (ii) of this subparagraph plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by such condition from participating in a vocational rehabilitation program under this chapter, or

"(II) four years.

"(v) When pursuant to clause (i) of this subparagraph a period of eligibility does not run for a period of time, such period of eligibility shall again begin to run on whichever of the following first occurs:

"(I) The first day, following such condition becoming sufficiently under control to enable the veteran to participate in such program of vocational rehabilitation, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to clause (i) of this subparagraph, for the veteran to initiate or resume participation in such a program.

"(II) The period of time during which that 12-year period of eligibility has, pursuant to such clause, been stopped from running equals 4 years.".

(c) EDUCATIONAL ASSISTANCE FOR POST-VIETNAM ERA VETERANS.—Section 1632(a) is amended—

(1) in paragraph (2)(A)—

(A) by inserting "or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section," after "misconduct,"; and

(B) by inserting "(except as provided in paragraph (4)(B) of this subsection)" after "length of time";

(2) in paragraph (3), by inserting "because of such disability" after "subsection"; and

(3) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and "(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for such extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs:

"(I) The first day, following the condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

"(II) The day after the end of the fourth year of the extension.".

(d) EDUCATIONAL ASSISTANCE FOR VIETNAM-ERA VETERANS.—Section 1662(a) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting "or because of a condition (and under the circumstances) described in paragraph (4) of this subsection," after "misconduct"; and

(B) in the second sentence, by inserting "because of such disability" after "sentence"; and

(2) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, a veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for the extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pusuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

"(II) four years.

"(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs:

"(I) The first day, following such condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

"(II) The day after the end of the fourth year of the extension.".

(e) EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS.—Section 1712(b) is amended—

(1) in paragraph (2)—

(A) by inserting "or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section," after "misconduct";

(B) by inserting "(except as provided in paragraph (4)(B)(ii) of this subsection)" after "length of time"; and

(C) by inserting "because of such disability," after "sentence"; and

(2) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragaph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible person in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) such person has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible person may be granted an extension of the applicable delimiting period because of such a condition if such person files an application for such extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the eligible person was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such person demonstrates, to the satisfaction of the Administrator, that such person was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to such person will again begin running on whichever of the following first occurs:

"(I) The first day, following the condition becoming sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

"(II) The day after the end of the fourth year of the extension.".

Subpart 3—Administrative and Miscellaneous Provisions

SEC. 331. COURSE WITHDRAWALS.

(a) IN GENERAL.—Section 1780(a)(4) is amended by inserting ", except that, in the first instance of withdrawal by an eligible veteran or person from a course or courses with respect to which such veteran or person has been paid assistance under this title, mitigating circumstances shall be considered to exist with respect to courses totalling no more than six semester hours or the equivalent thereof" after "circumstances".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply so as to require that mitigating circumstances be considered to exist only with respect to withdrawals from a course or courses being pursued with assistance under such title that occur after March 31, 1989.

SEC. 332. FUNDING OF EDUCATIONAL AND VOCATIONAL COUNSELING SERVICES.

(a) IN GENERAL.—Subchapter II of chapter 36 is amended by adding at the end the following new section:

"§ 1797. Funding of contract educational and vocational counseling

"(a) Subject to subsection (b) of this section, educational or vocational counseling services obtained by the Veterans' Administration by contract and provided to an individual applying for or receiving benefits under section 524 or chapters 30, 32, 34, or 35 of this title or chapter 106 of title 10, shall be paid for out of the Veterans' Administration appropriations account for readjustment benefits.

"(b) Payments from the appropriations account for readjustment benefits under this section shall not exceed $5 million in any fiscal year.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 36 is amended by inserting after the item relating to section 1796 the following new item:

"1797. Funding of contract educational and vocational counseling.".

(c) Effective Date.—The amendment made by subsection (a) shall take effect with respect to fiscal year 1989 and subsequent fiscal years.

SEC. 333. MEASUREMENT OF FULL-TIME STUDY.

Section 1788(e) is amended to read as follows:

"(e)(1) In order to determine the total clock hours of attendance or net of instruction under clause (1) or (2), respectively, of subsection (a) of this section for a course which is offered by an institution of higher learning and for which the institution requires one or more unit courses or subjects for which credit is granted toward a standard college degree pursued in residence on a quarter- or semester-hour basis—

"(i) the number of credit hours (semester or quarter hours) represented by such unit courses or subjects shall, with respect to the semester, quarter, or other applicable portion of the academic year during which such unit courses or subjects were pursued, be converted to equivalent clock hours, as determined pursuant to paragraph (2) of this subsection; and

"(ii) such equivalent clock hours shall be combined with the actual weekly clock hours, if any, of training concurrently pursued at such institution in the course not leading to a standard college degree.

"(2) For the purpose of determining equivalent clock hours under paragraph (1) of this subsection, the total number of credit hours (semester or quarter hours) being pursued will be multiplied by the quotient of the number of clock hours which constitute full time under clause (1) or (2) of subsection (a) of this section, as appropriate, divided by the number of semester hourse (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a full-time institutional undergraduate course at such institution.".

SEC. 334. EDUCATIONAL ASSISTANCE FOR CERTAIN INCARCERATED VETERANS UNDER THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.

Section 1631 is further amended by adding at the end (after subsection (d) as added by section 323(b)(2)) the following new subsection:

"(e)(1) Subject to the provisions of paragraph (2) of this subsection, the amount of the educational assistance benefits paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal, State, or local penal institution for conviction of a felony may not exceed the lesser of (A) such amount as the Administrator determines, in accordance with regulations which the Administrator shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and the cost of necessary supplies, books, and equipment, or (B) the applicable monthly benefit payment otherwise prescribed in this section or section 1633 of this title. The amount of the educational assistance benefits payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veterans for any course are paid under any Federal program (other than a program administered by the Administrator) or under any State or local program.

"(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony."

SEC. 335. VETERANS' ADVISORY COMMITTEE ON EDUCATION.

Section 1792 is amended—

(1) in subsection (a), by inserting before the period at the end of the second sentence ", and the chairman of the Commission to Assess Veterans' Education Policy established under section 320 of Public Law 99-576"; and

(2) in subsection (c), by striking out "December 31, 1989" and inserting in lieu thereof "December 31, 1993".

SEC. 336. VIETNAM-ERA GI BILL ELIGIBILITY FOR CERTAIN SERVICE ACADEMY GRADUATES.

(a) In General.—Section 1652(a) of title 38, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking out the period at the end of clause (C) and inserting in lieu thereof "; or"; and

(B) by adding at the end the following new clause:

"(D) (i) before January 1, 1977, commenced the third academic year as a cadet or midshipman at one of the service academies or the third academic year as a member of the Senior Reserve Officer Training Corps in a program of educational assistance under section 2104 or 2107 of title 10 if the individual (I) served on active duty for a period of more than 180 days pursuant to an appointment as a commissioned officer received upon graduation from one of the service academies or upon satisfactory completion of advanced training (as defined in section 2101 of title 10) as a member of the Senior Reserve Officers' Training Corps, respectively, (II) was discharged or released from such period of active duty under conditions other than dishonorable, and (III) enrolled in the educational assistance program under chapter 32 of this title, and (ii) before January 1, 1990, submits to the Administrator, in such form and manner as the Administrator may prescribe, an irrevocable election to be eligible after the date of such election for assistance under this chapter and, if enrolled under the chapter 32 program of educational assistance under this title at the time of such election, to be disenrolled from such program at that time."; and

(2) by adding at the end the following new paragraph:

"(4) For the purposes of this subsection, the term 'service academies' means the United States Military Academy, the United States Naval Academy, the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.".

(b) Conforming Amendment.—Section 1652(a)(2) of such title is amended by striking out "or (B)" and inserting in lieu thereof ", (B), or (D)".

(c) Disenrollment from Chapter 32 Program and Refunds of Contributions.—Upon receipt of an election under clause (D)(ii) of section 1652(a)(1) of title 38, United States Code (as added by subsection (a)(1), the Administrator shall—

(1)(A) not later than 60 days after receiving such an election, refund to the individual concerned the amount of the individual's unused contributions to the Post-Vietnam Era Veterans Education Account (hereinafter in this subsection referred to as the "VEAP Account"), and

(B) if the individual has received educational assistance under chapter 32 of such title for the pursuit of a program of education, pay to the individual (out of funds available for the payment of educational assistance under chapter 34 of such title) an amount equal to the amount by which the amount of the educational assistance that the individual would have received under chapter 34 of such title for the pursuit of such program exceeds the amount of the educational assistance that the individual received under such chapter 32 for the pursuit of such program; and

(2) refund to the Secretary of Defense the amount contributed by the Secretary to the VEAP Account on behalf of such individual remaining in the Account.

(d) Effective Date.—The amendments made by subsections (a) and (b) shall take effect as of January 1, 1977.

SEC. 337. REPEAL OF EXPIRED PROGRAM OF ACCELERATED-PAYMENT LOANS.

(a) Repeal.—Sections 1682A, 1686, 1737, and 1738 are repealed.

(b) Conforming Amendments.—Section 1798 is amended—

(1) by striking out "or person" each place it appears;

(2) in subsection (a)(1)—

(A) by striking out "and eligible person"; and

(B) by inserting "(if the program of education is pursued in a State)" after "subchapter";

(3) in subsection (b)—

(A) in paragraph (1), by striking out "or eligible person" and

(B) in paragraph (3), by striking out "or subchapter II of chapter 35, respectively,"

(4) in subsection (e)—

(A) in paragraph (2), by striking out "or person's"; and

(B) by amending paragraph (3)(B) to read as follows:

"(B) data regarding the default experience and default rate with respect to loans made under this section."

(5) in subsection (f)—

(A) by striking out paragraphs (1) and (3); and

(B) by striking out "(2)"; and

(6) in subsection (g)(2)(A)—

(A) in the first sentence, by striking out "and eligible persons"; and

(B) in the second sentence, by striking out "or eligible person".

(c) CLERICAL AMENDMENTS.—

(1) the table of sections at the beginning of chapter 34 is amended by striking out the items relating to sections 1682A and 1686.

(2) The table of sections at the beginning of chapter 35 is amended by striking out the items relating to sections 1737 and 1738.

(3) The table of sections at the beginning of chapter 36 is amended by striking out the heading relating to subchapter III and inserting in lieu thereof the following:

"SUBCHAPTER III—EDUCATION LOANS".

(4) Chapter 36 is amended by striking out the heading for subchapter III and inserting in lieu thereof the following:

"SUBCHAPTER III—EDUCATION LOANS".

PART C—NON-SERVICE-CONNECTED DISABILITY PENSION RECIPIENTS' VOCATIONAL TRAINING PROGRAM

SEC. 341. EXTENSION OF PROGRAM PERIOD.

(a) VOCATIONAL TRAINING.—Section 524 of title 38, United States Code, is amended—

(1) in subsection (a)(4), by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1990"; and

(2) in subsection (b)(4), by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1990".

(b) PROTECTION OF HEALTH-CARE ELIGIBILITY.—Section 525(b)(2) of such title is amended by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1990".

TITLE IV—MISCELLANEOUS BENEFITS PROVISIONS

PART A—INSURANCE PROGRAMS

SEC. 401. PAYMENT OF INTEREST ON SETTLEMENTS.

(a) AUTHORITY FOR PAYMENT.—(1) Subchapter I of chapter 19 further is amended by adding at the end the following new section:

"§ 728. Authority for payment of interest on settlements

"(a) Subject to subsection (b) of this section, the Administrator, under regulations which the Administrator shall prescribe, may pay interest on the proceeds of a participating National Service Life Insurance, Veterans' Special Life Insurance, and Veterans Reopened Insurance policy from the date of the policy matures to the date of payment of the proceeds to the beneficiary or, in the case of an endowment policy, to the policyholder.

"(b)(1) The Administrator may pay interest under subsection (a) of this section only in accordance with a determination by the Administrator that the payment of such interest is administratively and actuarially sound for the settlement option involved.

"(2) Interest paid under subsection (a) of this section shall be at the rate that is established by the Administrator for dividends held on credit or deposit in policyholders' accounts under the insurance program involved.".

(2) Subchapter II of chapter 19 is amended by adding at the end the following new section:

"§ 763. Authority for payment of interest on settlements

"(a) Subject to subsection (b) of this section, the Administrator, under regulations which the Administrator shall prescribe, may pay interest on the proceeds of a United States Government Life Insurance policy from the date the policy matures to the date of payment of the proceeds to the beneficiary or, in the case of a endowment policy, to the policyholder.

"(b)(1) The Administrator may pay interest under subsection (a) of this section only in accordance with a determination by the Administrator that the payment of such interest is administratively and actuarially sound for the settlement option involved.

"(2) Interest paid under subsection (a) shall be at the rate that is established by the Administrator for dividends held on credit or deposit in policyholders' accounts.".

(b) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 19 is amended—

(1) by inserting after the item relating to section 727 the following new item:

"728. Authority for payment of interest on settlements.";

and

(2) by inserting after the item relating to section 761 the following new item:

"762. Authority for payment of interest on settlements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to insurance policies maturing after the date of the enactment of this Act.

SEC. 402. ADJUSTMENT OF DISCOUNT RATES FOR ADVANCE PAYMENT OF PREMIUMS.

(a) AUTHORITY TO ADJUST RATES.—Subchapter I of chapter 19 is further amended by adding at the end (after the section added by section 401(a)(1)) the following new section:

"§ 729. Authority to adjust premium discount rates

"(a) Notwithstanding sections 702, 723, and 725 of this title and subject to subsection (b) of this section, the Administrator may from time to time adjust the discount rates for premiums paid in advance on National Service Life Insurance, Veterans' Special Life Insurance, and Veterans Reopened Insurance.

"(b)(1) In adjusting a discount rate pursuant to subsection (a) of this section, the Administrator may not set such rate at a rate lower than the rate authorized for the program of insurance involved under section 702, 723, or 725.

"(2) The Administrator may make an adjustment under subsection (a) of this section only in accordance with a determination by the Administrator that the adjustment is administratively and actuarially sound for the program of insurance involved.".

(b) The table of sections at the beginning of chapter 19 is amended by inserting after the new item relating to section 728 (as added by section 401(b)(1) of this Act) the following new item:

"729. Authority to adjust premium discount rates.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to premiums paid after the date of the enactment of this Act.

PART B—STATE CEMETERY CONSTRUCTION GRANT PROGRAM

SEC. 411. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.

Paragraph (2) of section 1008(a) is amended by striking out "four" the second place it appears and inserting in lieu thereof "nine".

PART C—HOME LOAN GUARANTY PROGRAM

SEC. 421. WAIVER OF INDEBTEDNESS.

Section 3102(b) is amended by striking out "the veteran" and all that follows through "veteran's" and inserting in lieu thereof "any individual described in section 1802(a) of this title as being eligible for housing loan benefits under chapter 37 of this title, or such individual's".

TITLE V—BOARD OF VETERANS' APPEALS

SEC. 501. INDEPENDENCE OF THE CHAIRMAN.

Section 4001(a) is amended by striking out "directly responsible to the Administrator" in the first sentence and inserting in lieu thereof "(hereinafter referred to as the 'Chairman')".

SEC. 502. TIMELINESS OF DISPOSITIONS.

Section 4001(a) is further amended by inserting before the period at the end of the second sentence "in a timely manner".

SEC. 503. APPOINTMENT AND REMOVAL OF THE CHAIRMAN AND MEMBERS.

(A) IN GENERAL.—Section 4001(b) is amended to read as follows:

"(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of five years. An individual may serve as Chairman for not more then three complete terms. The Chairman may be removed by the President for good cause.

"(2)(A) The members of the Board (including the Vice Chairman) shall be appointed by the Chairman for a term of nine years. A member appointed to fill a vacancy resulting from the resignation, death, or removal of a member before the end of the term for which the original appointment was made shall serve for the remainder of the unexpired term. Members may be reappointed without limitation. The Chairman shall designate one member as Vice Chairman to perform such functions as the Chairman shall designate and to serve as the Acting Chairman during the absence or disability of the Chairman or in the event of a vacancy in the office of Chairman. Such member shall serve as Vice Chairman at the pleasure of the Chairman.

"(B) A member of the Board may be removed only by the Chairman and only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Merit Systems Protection Board. Section 554(a)(2) of title 5 shall not apply to a removal action under this subparagraph. In such a removal action, a member shall have the rights set out in section 713(b) of such title.".

(b) INITIAL APPOINTMENTS UNDER AMENDED PROVISIONS.—(1) The President shall appoint a Chairman of the Board of Veterans' Appeals under section 4001(b)(1) of title 38, United States Code (as amended by subsection (a)), not later than one year after the date of the enactment of this Act. The individual who is serving as Chairman of the Board of Veterans' Appeals on the date of the enactment of this Act may continue to serve as Chairman until a successor is appointed. If such individual is appointed as Chairman under such section, none of the service of such individual as Chairman before the date of that appointment shall be considered for the purpose of determining the term of appointment or eligibility for reappointment under such section.

(2) Appointments of members of the Board of Veterans' Appeals under subsection (b)(2)(A) of section 4001 of title 38, United States Code (as amended by subsection (a)), may not be made until a Chairman has been appointed under subsection (b)(1) of such section. An individual who is serving as a member of the Board on the date of the enactment of this Act may continue to serve as a member until the earlier of the date on which the individual's successor is appointed under subsection (b)(2)(A) of such section or the expiration of the 180-day period that begins on the day after the Chairman is appointed under subsection (b)(1) of such section.

(3) Notwithstanding the provision in section 4001(b)(2) of title 38, United States Code (as amended by subsection (a)), that specifies the term for which members of the Board of Veterans' Appeals shall be appointed, of the first members appointed under such section—

(1) twenty-one members shall be appointed for a term of three years;
(2) twenty-two members shall be appointed for a term of six years; and
(3) twenty-two members shall be appointed for a term of nine years.

The first Vice Chairman of the Board designated under such section shall be selected from among the members appointed for terms of six years or nine years.

SEC. 504. SALARY OF CHAIRMAN.

Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chairman, Board of Veterans' Appeals.".

SEC. 505. REPORTS ON BOARD ACTIVITIES AND RESOURCES.

Section 4001 is further amended by adding at the end the following new subsection:

"(d) The Chairman shall submit a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives, not later than December 31, 1988, and annually thereafter, on the experience of the Board during the prior fiscal year together with projections for the fiscal year in which the report is submitted and the subsequent fiscal year. Such report shall contain, as a minimum, information specifying the number of cases appealed to the Board during the prior fiscal year, the number of cases pending before the Board at the beginning and end of such fiscal year, the number of such cases which were filed during each of the 36 months preceding the then current fiscal year, the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the prior fiscal year, and the number of members of, and the professional, administrative, clerical, stenographic, and other personnel employed by, the Board at the end of the prior fiscal year. The projections for the current fiscal year and subsequent fiscal year shall include, for each such year, estimates of the number of cases to be appealed to the Board and an evaluation of the Board's ability, based on existing and projected personnel levels, to ensure timely disposition of such appeals as provided for by subsection (a) of this section.".

SEC. 506. PROHIBITION OF BONUSES FOR MEMBERS.

Section 4001 is further amended by adding at the end (after the subsection added by section 505) the following new subsection:

"(e) Notwithstanding any other provision of law, no member or temporary or acting member of the Board shall be eligible for or receive, directly or indirectly, bonuses (in addition to salary) relating to service on the Board.".

SEC. 507. VOTING BY THE BOARD.

Section 4003 is amended to read as follows:

"§ 4003. Determinations by the Board

"(a)(1) A determination, when concurred in by the requisite number of members of a section, shall be the final decision of the Board.

"(2) The requisite number of members of a section who must concur in a determination for it to constitute a final decision is—

"(A) for an allowance of a claim, a majority of the members of the section; or

"(B) for a denial of a claim, all members of the section.

"(b) When there is a disagreement among the members of a section in any case in which unanimity is required for a final decision, the concurrence of the Chairman with the majority of the members of such section shall constitute the final decision of the Board. The Chairman may, instead of voting, expand the size of the section for determination of that case, and the concurrence of a majority of the members of the expanded section shall constitute the final decision of the Board.

"(c) If, without the vote of a temporary member designated under section 4001(c)(1) of this title or the vote of an acting member designated under section 4002(a)(2)(A)(ii) of this title, a section would be evenly divided in the determination of any claim—

"(1) such member shall not vote; and

"(2) the Chairman shall expand, by not less than two members, the size of the section for determination of that claim.

"(d) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record or may reach a contrary conclusion upon the basis of additional information from the department of the Secretary concerned after notice of such additional information is furnished to the claimant and the claimant is provided an opportunity to be heard in connection with such information.".

SEC. 508. DECISIONS OF THE BOARD.

(a) Decisions Based on the Record.—(1) Section 4004(a) is amended—

(A) by striking out "involving" in the first sentence and inserting in lieu thereof "for"; and

(B) by inserting before the period at the end of the second sentence "after affording the claimant an opportunity for a hearing and shall be based exclusively on evidence and material of record in the proceeding, and upon consideration of all such evidence and material, and on applicable provisions of law."

(2) Section 4005(d)(5) is amended by striking out "will base its decision on the entire record and".

SEC. 509. REOPENING OF DISALLOWED CLAIMS.

Subsection (b) of section 4004 is amended to read as follows:

"(b)(1) Except as provided in paragraph (2) of this subsection, when a claim is disallowed by the Board, it may not thereafter be reopened and allowed and no claim based upon the same factual basis shall be considered.

"(2) Following such a disallowance, the Board (directly or through the agency of original jurisdiction, as described in section 4005(b)(1) of this title)—

"(A) when new and material evidence is presented or secured, shall authorize the reopening of a claim and a review of the Board's former decision; and

"(B) for good cause shown, may authorize the reopening of a claim and a review of the Board's former decision.".

SEC. 510. NOTICE AND CONTENT OF DECISIONS.

Subsection (d) of section 4004 is amended to read as follows:

"(d) After reaching a decision in a case, the Board shall promptly mail notice of its decision to the claimant and the claimant's authorized representative, it any, at the last known address of the claimant and at the last known address of the claimant's authorized representative, if any. Each decision of the Board shall include—

"(1) a written statement of the Board's findings and conclusions, and the reasons or bases therefor, on all material issues of fact and law and on matters of discretion presented on the record; and

"(2) an order granting appropriate relief or denying relief.".

SEC. 511. PROHIBITION AGAINST PRESUMPTION OF AGREEMENT.

Paragraph (4) of section 4005(d) is amended to read as follows:

"(4) The claimant may not be presumed to agree with any statement of fact or law contained in the statement of the case to which the claimant does not specifically express agreement.".

SEC. 512. MEDICAL OPINIONS.

(a) In General.—Section 4009 is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 4009. Medical opinions";

and

(2) by adding at the end the following new subsections:

"(c)(1) Whenever there exist in the evidence of record in a case being considered by the Board a substantial disagreement between the substantiated findings or opinions of two physicians with respect to an issue material to the outcome of the case, the Board shall, upon the request of the claimant and after taking appropriate action to attempt to resolve the disagreement, arrange for an advisory medical opinion in accordance with the procedure prescribed in subsection (b) of this section. The claimant may appeal a denial of a request for such an opinion to the Chairman.

"(2) If the Board or the Chairman upon appeal denies a request for an advisory medical opinion, the Board, or the Chairman after the appeal, shall prepare and provide to the claimant and the claimant's authorized representative, if any, a statement settling forth the basis for the denial and, in the case of a denial of such request by the Board, a notice of the claimant's right to appeal the denial to the Chairman.

"(3) Actions of the Board under this subsection, including any such denial concurred in by the Chairman (if appealed), shall be final and conclusive, and no other official or any court of the United States shall have the power or jurisdiction to review any aspect of any such action by an action in the nature of mandamus or otherwise.

"(d) If a member of the Board receives the medical opinion of any physician relating to any appeal under consideration by such member (other than a medical opinion of a physician on the section of the Board considering such appeal) or an employee of the Board in the consideration of such appeal receives such an opinion, the Board shall furnish such opinion to the claimant and shall afford the claimant 60 days in which to submit a response to such opinion before the Board issues a final decision on the appeal. The Board shall consider any such response and shall include in the final decision a discussion of such opinion, the response (if any), and the effect of such opinion and response on the Board's decision.".

(b) Clerical Amendments.—The table of sections at the beginning of chapter 71 is amended by striking out the item relating to section 4009 and inserting in lieu thereof the following:

SEC. 513. ADJUDICATION PROCEDURES.

(a) In General.—Chapter 71 is further amended by adding at the end the following new section:

"§ 4010. Adjudication procedures

"(a) For purposes of conducting any hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, the Administrator and the members of the Board may administer oaths and affirmations, examine witnesses, and receive evidence.

"(b) Any oral, documentary, or other evidence, even though inadmissible under the rules of evidence applicable to judicial proceedings, may be admitted in a hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, but the Administrator and the Chairman, under regulations which the Administrator and the Chairman shall jointly prescribe, may provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

"(c)(1) In the course of any proceeding before the Board, any party to such proceeding or such party's authorized representative shall be afforded the opportunities—

"(A) to examine and, on payment of a fee prescribed pursuant to section 3302(b) of this title (not to exceed the direct cost of duplication), obtain copies of the contents of the case files and all documents and records to be used by the Veterans' Administration at such proceeding;

"(B) to present witnesses and evidence, subject only to such restrictions as may be set forth in regulations prescribed pursuant to subsection (b) of this section, as to materiality, relevance, and undue repetition;

"(C) to make oral argument and submit written contentions, in the form of a brief or similar document, on substantive and procedural issues;

"(D) to submit rebuttal evidence;

"(E) to present medical opinions and request an independent advisory medical opinion pursuant to section 4009(c) of this title; and

"(F) to serve written interrogatories on any person, including any employee of the Veterans' Administration, which interrogations shall be answered separately and fully in writing and under oath unless written objection thereto, in whole or in part, is filed with the Chairman by the person to whom the interrogatories are directed or such person's representative.

"(2) The fee provided for in paragraph (1)(A) of this subsection may be waived by the Chairman, pursuant to regulations which the Administrator shall prescribe, on the basis of the party's inability to pay or for other good cause shown.

"(3) In the event of any objection filed under paragraph (1)(F) of this subsection, the Chairman shall, pursuant to regulations which the Chairman shall prescribe establishing standards consistent with standards for protective orders applicable in the United States District Courts, evaluate such objection and issue an order (A) directing that, within such period as the Chairman shall specify, the interrogatory or interrogatories objected to be answered as served or answered after modification, or (B) indicating that the interrogatory or interrogatories are no longer required to be answered.

"(4) If any person upon whom interrogatories are served under paragraph (1)(F) of this subsection fails to answer or fails to provide responsive answers to all of the interrogatories within thirty days after services or such additional time as the Chairman may allow, the Chairman, upon determining that the party propounding such interrogatories has shown the general relevance and reasonableness of the scope of the interrogatories, shall issue a subpena under section 3311 of this title (with enforcement of such subpena to be available under section 3313 of this title) for such person's appearance and testimony on such interrogatories at a deposition on written questions, at a location within one hundred miles of where such person resides, is employed, or transacts business.

"(d)(1) A claimant may request a hearing before a traveling section of the Board. Cases shall be scheduled for hearing before such a section in the order in which the requests for hearing are received by the Board.

"(2) If a claimant makes a request for a hearing before a traveling section of the Boafd and, by reason of limited time for the conduct of hearings by such section at the location for the requested hearing, such claimant's appeal is not scheduled for hearing or the hearing is not conducted, the Board shall afford such claimant an opportunity to present the case to the Board in a hearing conducted by telephone or video connection before a section of the Board or in a videotape of a hearing conducted for the Board by Veterans' Administration adjudication personnel at a regional office of the Veterans' Administration. An audiotape or videotape of such hearing shall be included in the record of the appeal and considered by the Board in the same manner as recordings of testimony and documentary evidence are considered.

"(e) In the course of any hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, an employee of the Veterans' Administration (including an employee of the Board of Veterans' Appeals) may at any time disqualify himself or herself, on the basis of personal bias or other cause, from adjudicating the claim. On the filing by a party in good faith of a timely and sufficient affidavit averring personal bias or other cause for disqualification on the part of such an employee, the Administrator, as to proceedings other than proceedings before the Board, or the Chairman, as to proceedings before the Board, shall determine the matter as a part of the record and decision in the case, pursuant to regulations prescribed jointly by the Administrator and the Chairman.

"(f) The transcript or recording of testimony and the exhibits, together with all papers and requests filed in the proceeding, and the decision of the Board (1) shall constitute the exclusive record for decision in accordance with section 4004(a) of this title, (2) shall be available for inspection by any party to such proceeding, or such party's authorized representative, at reasonable times and places, and (3) on the payment of a fee prescribed under section 3302(b) of this title (not to exceed the direct cost of duplication), shall be copied for the claimant or such claimant's authorized representative within a reasonable time. Such fee may be waived by the Chairman, pursuant to regulations which the Administrator shall prescribe, on the basis of the party's inability to pay for other good cause shown.

"(g) Notwithstanding section 4004(a) of this title, section 554(a) of title 5, or any provision of law, adjudication and hearing procedures prescribed in this title and in regulations prescribed by the Administrator, as to proceedings other than proceedings before the Board, or by the Chairman, as to proceedings before the Board, or by the Administrator and the Chairman jointly, under this title for the purpose of administering veterans' benefits shall be exclusive with respect to hearings, investigations, and other proceedings in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following item:

"4010. Adjudication procedures.".

SEC. 514. NOTICES OF PROCEDURES.

(a) In General.—Chapter 71 is further amended by adding at the end (after the section added by section 513(a)) the following new section:

"§ 4011. Notices of procedures.

"In the case of any disallowance, in whole or in part, of a claim for benefits under laws administered by the Veterans' Administration, the Administrator, as to proceedings other than proceedings before the Board, or the Chairman, as to proceedings before the Board, shall, at each procedural stage relating to the disposition of such claim, beginnig with disallowance after an initial review or determination, and including the furnishing of a statement of the case and the making of a final decision by the Board, provide to the claimant and such claimant's authorized representative, if any, written notice of the procedural rights of the claimant. Such notice shall be on such forms as the Administrator or the Chairman, respectively, shall prescribe by regulation and shall include, in easily understandable language, with respect to proceedings before the Veterans' Administration and the Board (1) descriptions of all subsequent procedural stages provided for by statute, regulation, or Veterans' Administration policy, (2) descriptions of all rights of the claimant expressly provided for in or pursuant to this chapter, of the claimant's rights to a hearing, to reconsideration, to appeal, and to representation, and of any specific procedures necessary to obtain the various forms of review available for consideration of the claim, (3) in the case of an appeal to the Board, the rights to and opportunities for a hearing provided in section 4010(d) of this title, and (4) such other information as the Administrator or the Chairman, respectively, as a matter of discretion, determines would be useful and practical to assist the claimant in obtaining full consideration of the claim.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end (after the item added by section 513(b)) the following new item:

SEC. 515. EFFECTIVE DATE OF AWARDS IN REOPENED CASES.

Section 3010(i) is amended—

(1) by inserting "(1)" after "(i)"; and

(2) by adding at the end the following new paragraph:

"(2) Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence in the form of official reports from the department of the Secretary concerned, the effective date of commencement of the benefits so awarded shall be the date on which an award of benefits under the disallowed claim would have been effective had the claim been allowed on the date it was disallowed.".

SEC. 516. ATTORNEYS' FEES.

Section 3404(c) is amended—

(1) by inserting "(1)" before "The";

(2) by redesignating clauses (1), (2), and (3) as clauses (A), (B), and (C), respectively; and

(3) by adding at the end the following new paragraph:

"(2) The provisions of this subsection shall apply only to cases involving claims for benefits under the laws administered by the Veterans' Administration, and such provisions shall not apply in cases in which the Veterans' Administration is the plaintiff or in which other attorneys' fees statutes apply.".

TITLE VI—HEALTH CARE

PART A—PROGRAMS RELATING TO POST-TRAUMATIC STRESS DISORDER AND MENTAL HEALTH

SEC. 601. CARE FOR VIETNAM VETERANS' WITH SERVICE-RELATED POST-TRAUMATIC STRESS DISORDER.

(a) IN GENERAL.—Section 602 is amended—

(1) by inserting "(a)" before "For"; and

(2) by adding at the end the following new subsection:

"(b) Any veteran—

"(1) who served on active duty in the Republic of Vietnam or elsewhere in the Vietnam theater of operations, and

"(2) whom a mental health professional designated by the Chief Medical Director has diagnosed, following an examination of such veteran by such professional, to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) even though such disorder has not been determined to be service connected.".

(b)(1) The heading of such section is amended to read as follows:

"§ 602. Special provisions relating to mental illness disabilities".

(2) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"602. Special provisions relating to mental illness disabilities".

SEC. 602. SPECIAL COMMITTEE ON POST-TRAUMATIC STRESS DISORDER.

(a) EVALUATION OF STUDY OF POSTWAR PSYCHOLOGICAL PROBLEMS OF VIETNAM VETERANS.—(1) Not later than April 1, 1989, the Special Committee on Post-Traumatic Stress Disorder (hereinafter in this section referred to as the "Special Committee"), established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984 (Public Law 98-528; 98 Stat. 2691), shall submit to the Administrator of Veterans' Affairs a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 994). Such report shall include the Special Committee's—

(A) overall evaluation of the conduct, validity, and meaning of the study;

(B) assessment of the capability of the Veterans' Administration to meet the needs for the diagnosis and treatment of post-traumatic stress disorder of veterans, and other psychological problems of veterans in readjusting to civilian life, as estimated in the results of such study;

(C) evaluation of the Administrator's report on the study; and

(D) recommendations for any further or follow-up research on the matters addressed in the study.

(2) Not later than 30 days after receiving the Special Committee's report under paragraph (1), the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments concerning the report that the Administrator considers appropriate.

(b) UPDATES OF REPORTS UNDER SECTION 110(c) OF PUBLIC LAW 98-528.—(1) Not later than February 1 of each of 1990 and 1991, the Special Committee shall submit to the Administrator a report containing information updating the reports submitted to the Administrator under section 110(e) of the Veterans' Health Care Act of 1984 (Public Law 98-528; 98 Stat. 2693), together with any additional information the Special Committee considers appropriate regarding the overall efforts of the Veterans' Administration to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life.

(2) Not later than 60 days after receiving each of the Special Committee's reports under paragraph (1), the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, togeth-

er with any comments concerning the report that the Administrator considers appropriate.

SEC. 603. STUDY OF PSYCHOLOGICAL PROBLEMS AMONG ASIAN-AMERICAN, AMERICAN-INDIAN, NATIVE-HAWAIIAN, OTHER NATIVE-AMERICAN PACIFIC ISLANDER (INCLUDING AMERICAN SAMON NATIVE), AND ALASKA NATIVE VIETNAM VETERANS.

(a) Study Requirement.—The Administrator of Veterans' Affairs shall provide for the conduct of a comprehensive study of the following matters:

(1) The prevalence and incidence of the following psychological problems in the populations of Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific Islander (including American Samoan Native), and Alaska Native Vietnam veterans:

(A) Post-traumatic stress disorder.

(B) Other psychological problems experienced by such veterans in readjusting to civilian life.

(2) The effects of such disorder and such problems on such veterans. The Administrator shall provide for particular attention to be devoted in the conduct of the study to veterans who have service-connected disabilities and to women veterans.

(b) Report.—Not later than October 1, 1990, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the results of the study required by subsection (a).

(c) Definitions.—For the purposes of this section:

(1) The terms "veteran", "service-connected", and "Vietnam veteran" shall have the same meanings as are provided in section 102(c) of the Veterans' Health Care Amendments of 1983 (Public Law 98–160; 38 U.S.C. 612A note).

(2) The term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(3) The term "Native Hawaiian" has the meaning given that term in section 813(3) of the Native American Programs Act of 1974 (42 U.S.. 2992c(3)).

SEC. 604. MENTAL ILLNESS RESEARCH, EDUCATION, AND CLINICAL CENTERS.

(a) Establishment of Program.—Section 4101 is amended by adding at the end the following new subsection:

"(g)(1) The purposes of this subsection are (A) to improve and expand the capability of Veterans' Administration health-care facilities to respond with the most effective and appropriate services possible to the needs of veterans suffering from mental illness, especially from those conditions which are service-related, and (B) to advance scientific knowledge regarding mental illness, especially service-related conditions, and regarding such needs and the methods of meeting them by facilitating higher quality care for eligible veterans suffering from mental illness, especially service-related conditions, through research, the education and training of health personnel in the provision of health care to such veterans, and the development of improved models of clinical services for eligible veterans suffering from mental illness.

"(2)(A) In order to carry out the purposes of this subsection, the Administrator, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five Veterans' Administration health-care facilities (at least one of which shall be designated before July 1, 1989) as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficeint funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

"(B) In designating locations for centers under subparagraph (A) of this paragraph, the Administrator, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

"(C) The Administrator may not designate any health-care facility as a location for a center under subparagagh (A) of this paragraph unless the Administrator, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

"(i) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such center so as to provide such residents with training in the diagnosis and treatment of mental illness;

"(ii) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such center so as to provide such students with training in the diagnosis and treatment of mental illness;

"(iii) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

"(iv) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

"(v) a policymaking advisory committee composed of appropriate mental health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

"(vi) the capability to conduct effectively evaluations of the activities of such center.

"(3) There are authorized to be appropriated for the basic support of the research and education and training activities of the centers established pursuant to paragraph (1) of this subsection $3,125,000 for fiscal year 1989 and $6,250,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Veterans' Administration medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

"(4) Activities of clinical and scientific investigation at each such center shall be eligible to compete for the award of funding from funds appropriated for the Veterans' Administration medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

"(5) The Chief Medical Director shall ensure that research activities carried out through such centers include an appropriate emphasis on the psychosocial dimension of mental illness and on models for furnishing care and treatment to veterans suffering from mental illness.

"(6) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of such centers is disseminated throughout the Department of Medicine and Surgery through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter II of chapter 73 and other means.

"(7) The official within the Central Office of the Department responsible for mental health and behavioral sciences matters shall be responsible for the supervision of the operation of the centers established pursuant to paragraph (1) of this subsection.".

(b) REPORTS.—Not later than February 1 of each of 1990, 1991, and 1992, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience for the prior fiscal year under the centers established pursuant to the amendment made by subsection (a). Each such report shall contain—

(1) Descriptions of (A) activities carried out at each center and the funding provided for such activities, (B) the advances made at each center in research, education and training, and clinical activities, and (C) the efforts to disseminate throughout the Department of Medicine and Surgery useful information produced by such activities; and

(2) the Administrator's evaluations of the effectiveness of the centers in fulfilling the purposes of subsection (g) of section 4101 of title 38, United States Code, as added by subsection (a).

SEC. 605. READJUSTMENT COUNSELING ELIGIBILITY EXTENSION.

Section 612A is amended—

(1) in subsection (a)—

(1) by inserting "(1)(A)" before "Upon";

(2) by amending the first sentence of paragraph (1)(A) (as redesignated by clause (1) of this section) to read as follows: "Upon the request of—

"(i) any veteran who served on active duty during the Vietnam era, or "(ii) any veteran who served on active duty after May 7, 1975, in an area during a period in which hostilities (as defined in paragraph (2) of this subsection) occurred in such area,

the Administrator shall furnish counseling to assist such veteran in readjusting to civilian life."; and

(C) by adding at the end of the following:

"(B) Upon the request of any veteran who served on active duty during World War II or the Korean conflict, the Administrator may furnish counseling to such veteran in overcoming any psychological problems associated with such veteran's service during such period. In furnishing counseling under this paragraph, the Administrator shall place particular emphasis on the needs of those who engaged in combat with the enemy. Such counseling shall include a general mental and psychological assessment to ascertain whether such veteran has mental or psychological problems associated with such veteran's active military, naval, or air service.

"(2) For the purposes of subparagraph (1)(A)(ii) of this subsection, the term 'hostilities' means a situation in which members of the Armed Forces were, as determined by the Administrator in consultation with the Secretary of Defense, subjected to danger from armed conflict comparable to the danger to which members of the Armed Forces have been subjected in battle with the enemy during a period of war."; and

(2) in subsection (e)(1), by inserting "to a veteran described in paragraph (1)(A) of such subsection (a)" after "section".

SEC. 606. COMMUNITY-BASED ALCOHOL AND DRUG TREATMENT SERVICES.

(a) PERMANENT CONTRACT PROGRAM.—Section 620A is amended—

(1) by striking out subsections (e) and (f); and

(2) by redesignating subsection (g) as subsection (e).

(b) CLINICAL EVALUATION AND REPORT.—(1) During fiscal years 1989 through 1997, the Administrator shall conduct a clincial evaluation in order to determine the long-term results of drug and alcohol abuse treatment furnished to veterans in contract residential treatment facilities under section 620A of title 38, United States Code.

(2) The evaluation shall include an assessment of the following:

(A) The long-term results of treatment referred to in paragraph (1) on drug and alcohol use by veterans who may have received such treatment.

(B) The need for hospitalization of such veterans for drug and alcohol abuse after completion of the residential treatment.

(C) The employment status and income of such veterans.

(D) The extent of any criminal activity of such veterans.

(E) Whether certain models and methods of residential treatment for drug and alcohol abuse are more successful for veterans with specific abuses, specific levels of resources available to them, and specific needs than are other models and methods.

(3) To the extent feasible, the Administrator shall select for consideration in the evaluation veterans whose treatment for drug and alcohol abuse in contract residential treatment facilities under such section represents a variety of models and methods of residential drug and alcohol abuse treatment.

(4) REPORTS.—The Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives the following reports on the evaluation:

(1) Not later than February 1, 1993, an interim report containing information obtained during the first four years of the evaluation and any conclusions that the Administrator has drawn on the basis of that information.

(2) Not later than March 31, 1998, a final report containing information obtained during the evaluation and the determinations and conclusions of the Administrator based on that information.

PART B—OTHER HEALTH-CARE PROGRAMS

SEC. 611. RESPITE CARE.

(a) EXTENSION OF AUTHORITY.—Section 620B(c) of title 38, United States Code, is amended by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1990".

(b) EXTENSION OF DUE DATE FOR REPORT.—Section 201(b)(2) of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Public Law 99-576; 100 Stat. 3254) is amended by striking out "February 1, 1989" and inserting in lieu thereof "February 1, 1990".

SEC. 612. CONTRACTS AND GRANTS FOR MEDICAL CARE FOR UNITED STATES VETERANS IN THE REPUBLIC OF THE PHILIPPINES.

(a) IN GENERAL.—Subsections (a) and (b)(1) of section 632 are amended by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1990".

(b) REPORTS.—The Administrator shall—

(1) not later than February 1, 1989, and 1990, submit reports containing detailed information describing the use of grant funds provided to the Republic of the Philippines under section 632(b) of title 38, United States Code, during the preceding fiscal year; and

(2) not later than May 1, 1989, submit a report containing—

(A) information for each of fiscal years 1986, 1987, and 1988, with breakdowns providing such information with respect to veterans being furnished care or treatment for service-connected disabilities and those being furnished care or treatment for non-service-connected disabilities, as to (i) the number of United States veterans furnished care at Veterans' Administration expense pursuant to such section 632(b), (ii) the number of inpatient days of care and outpatient visits so furnished for United States veterans' and (iii) the amounts of such care and visits so furnished at the Veterans Memorial Medical Center or at other facilities in the Republic of the Philippines;

(B) an analysis comparing (i) the cost-effectiveness of furnishing care and treatment to such veterans through the Veterans Memorial Medical Center or other facilities in the Republic of the Philippines, and (ii) the quality of care available at the Center and such other facilities;

(C) a projection of the needs for care and treatment of United States veterans in the Republic of the Philippines during each of fiscal years 1990 through 1993;

(D) a projection of the needs of the Veterans Memorial Medical Center for each of fiscal years 1990 through 1993 for the replacement and upgrading plant and facilities in order to maintain the provision of an appropriate quality of care for United States veterans at the Veterans Memorial Medical Center;

(E) the Veterans' Administration's plans for meeting the needs for care and treatment of United States veterans residing in the Philippines;

(F) any planned administrative actions, and any recommendations for legislation, that the Administrator considers appropriate to include in the report; and

(G) any comments the Secretary of State may wish to make on the contents of the report.

SEC. 613. SHARING OF SPECIALIZED MEDICAL RESOURCES

(a) Section 5051 is amended by striking out "hospitals" both places it appears in the first sentence and inserting in lieu thereof "health-care facilities".

(b) Section 5053 is amended—

(1) in subsection (a)—

(A) by striking out "hospitals" the first place it appears and all that follows through "community" and inserting in lieu thereof "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools"; and

(B) by striking out the last sentence; and

(2) in subsection (b)—

(A) in the first sentence, by striking out "charge" and all that follows and inserting in lieu thereof "methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved."; and

(B) in the second sentence, by inserting before the period at the end "and to funds that have been allotted to the facility that furnished the resource involved".

SEC. 614. STATE HOME CONSTRUCTION GRANTS.

Section 5033(a) is amended by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1992".

SEC. 615. PILOT PROGRAMS FOR PROVIDING ASSISTIVE ANIMALS.

(a) REQUIREMENT FOR PILOT PROGRAM.—During fiscal years 1989, 1990, 1991, and 1992, the Administrator shall conduct a pilot program under which the Administrator shall—

(1) provide (A) monkeys specially trained to assist in the performance of the tasks of daily living for individuals who are quadriplegic to not more than twenty veterans who have service-connected disabilities rated 50 percent or more disabling and are quadriplegic, and (B) dogs so trained to up to ten such veterans; and

(2) facilitate the provision of such monkeys to not more than twenty other veterans who are quadriplegic.

(b) SELECTION OF VETERAN-PARTICIPANTS.—In making a determination whether to provide a veteran with a monkey or dog, or facilitate the provision of a monkey to a veteran, under the pilot program, the Administrator shall (1) take into account the extent to which the veteran needs and can benefit from the assistance that the monkey or dog would provide, and (2) provide a preference to veterans who have service-connected quadriplegia. The Administrator shall approve a veteran for participation in the pilot program only upon a determination by the Administrator that the veteran is well-suited to carrying out the responsibilities involved in the care and effective use of the monkey or dog for the purpose of assisting the veteran in the task of daily living.

(c) ADMINISTRATIVE MATTERS.—The Administrator is authorized to enter into contracts for the provision of monkeys under subsection (a)(1) under which the Administrator would make payments to the provider, in advance of the monkey being provided, to reimburse the provider, in advance of the monkey being provided, to reimburse the provider for training costs incurred or, under terms and conditions established by the Administrator to protect the interests of the Government, to make payments in advance of the incurring of such costs.

(2) Ownership of an animal provided under the pilot program shall be determined in accordance with a contract between the provider and the veteran.

(d) EVALUATION AND REPORT.—(1) The Administrator shall evaluate the conduct of the pilot program, the nature and extent of the benefits to veterans of being provided with animals under the program (including any benefits related to employment), the costs and cost-effectiveness of providing animals to veterans who are quadriplegic, and the effect of providing animals to veterans on the recruitment and retention of the veterans' primary caregivers (if paid) or on the morale of such caregivers (if unpaid).

(2) Not later than February 1, 1992, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience under the pilot program. The report shall contain—

(A) the results of the evaluation carried out under paragraph (1), including descriptions of the procedures and criteria used to select veterans to be provided with monkeys or dogs, the nature and extent of the benefits to the veterans involved of being provided with monkeys or dogs, and the amounts and types of costs incurred by the Veterans' Administration in the conduct of the program;

(B) the Administrator's views on the relationship between the provision of a monkey or dog to a veteran and the payment to a veteran of (i) an aid and attendance allowance under section 314(r) of title 38, United States Code, or (ii) an annual rate of pension under section 521 of such title based on the veteran's need of regular aid and attendance; and

(C) any recommendations that the Administrator considers appropriate with respect to continuation of the pilot program or whether the authority to provide such monkeys and dogs should be made permanent.

(e) DEFINITIONS.—For the purposes of this Act, the terms "veteran" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code.

(f) SIGNAL DOGS PILOT PROGRAM.—(1)(A) Except as provided in subparagraph (B), during fiscal years 1989, 1990, 1991, and 1992, the Administrator shall conduct a pilot program under which the Administrator shall provide dogs specially trained to provide hearing assistance to individuals who are deaf (such dogs being hereinafter in this subsection referred to as "signal dogs") to not more than twenty veterans with service-connected hearing impairments who are in need of the assistance of such dogs.

(B) The requirement in subparagraph (A) of the conduct of a pilot program shall not apply if the Administrator determines that the provision of such dogs to such veterans by the Veterans' Administration is authorized under chapter 17 of title 38.

(2) In making a determination whether to provide a veteran with a signal dog under paragraph (1), the Administrator shall (A) take into account the extent to which the veteran needs and can benefit from the assistance that the signal dog would provide, and (B) provide a preference to veterans who have service-connected hearing impairments. The Administrator shall approve a veteran for participation

in the pilot program only upon a determination by the Administrator that the veteran is well-suited to carrying out the responsibilities involved in the care and effective use of the signal dog.

(3) Ownership of a signal dog provided under paragraph (1) shall be determined in accordance with a contract between the provider and the veteran.

(4) If a pilot program is required to be conducted under paragraph (1), the Administrator shall—

(A) evaluate the conduct of the program, the nature and extent of the benefits to veterans of being provided with signal dogs under the program (including any benefits related to employment), and the costs and cost-effectiveness of providing such dogs to veterans who have hearing impairments; and

(B) include in the report required by subsection (d)(2)—

(i) the results of the evaluation carried out under clause (A) of this paragraph, including descriptions of the procedures and criteria used to select veterans to be provided with signal dogs, the nature and extent of the benefits to the veterans involved of being provided with such dogs, and the amounts and types of costs incurred by the Veterans' Administration in the conduct of the program; and

(ii) any recommendations that the Administrator considers appropriate with respect to continuation of the pilot program or whether the authority to provide signal dogs should be made permanent.

Part C—Health-Care Personnel

SEC. 621. APPOINTMENT OF VETERANS' ADMINISTRATION-TRAINED PERSONNEL.

Section 4106 is amended by adding at the end the following new subsection:

"(h)(1) Notwithstanding subchapter I of chapter 33 of title 5, the Administrator, upon the recommendation of the Chief Medical Director, may appoint in the competitive service under title 5 individuals with a recognized degree or certificate from an accredited institution in a health-care profession or occupation who were appointed to and successfully participated in a Veterans' Administration-affiliated clinical education program.

"(2) In using such authority to appoint individuals in such service, the Administrator shall apply the principles of preference for the hiring of veterans and other persons establishing in subchapter I of chapter 33 of title 5.".

SEC. 622. APPROVAL OF SPECIAL RATES OF PAY.

Section 4107(g)(4) is amended—

(1) in the first sentence, by striking out "ninety" and inserting in lieu thereof "forty-five"; and

(2) by adding at the end the following new sentence: "If, prior to such effective date, the President approves such increase, the Administrator may advance the effective date to any date not earlier than the date of the President's approval.".

SEC. 623. HEALTH PROFESSIONAL SCHOLARSHIP AWARDS.

Section 43129(b)(5) is amended to read as follows:

"(5) In selecting applicants for the Scholarship Program, the Administrator shall—

"(A) give priority to the applications of individuals who will be entring their final year in a course of training; and

"(B) ensure an equitable allocation of scholarships to persons enrolled in their second year of a program leading to an associate degree in nursing.".

SEC. 624. ASSISTANCE TO HEALTH-PERSONNEL EDUCATIONAL INSTITUTIONS.

(a) Development of New Health Careers.—Section 5091 is amended by inserting "(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)" after "paramedical personnel, and".

(b) Authorization of Appropriations for Grants.—(1) Subchapter III of chapter 82 is amended by adding at the end the following new section:

"§ 5094. Authorization of appropriations

"(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1989 and 1990 and $6,000,000 for each of fiscal years 1991 and 1992.

"(b)(1) Sums appropriated pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated.

"(2) Of the funds appropriated pursuant to the authorization in subsection (a) of this section, not to exceed 10 percent may be expended for the purpose described in section 5096(2) of this title.".

(2) The table of sections at the beginning of chapter 82 is amended by inserting after the item relating to section 5093 the following new item:

"5094. Authorization of appropriations.".

SEC. 625. PILOT PROGRAM OF PAY AND PERSONNEL MANAGEMENT PRACTICES

(a) In General.—The Chief Medical Director of the Veterans' Administration shall conduct a pilot program at not less than five Veterans' Administration medical centers during calendar years 1989, 1990, and 1991, in order to determine—

(1) the effects of pay and personnel management practices of the Department of Medicine and Surgery of the Veterans' Administration on the ability of the Veterans' Administration to recruit and retain categories of employees (A) who are qualified to provide direct patient-care services, or services that are incident to direct patient-care services, in Veterans' Administration health-care facilities, and (B) as to which problems of recruitment and retention have arisen; and

(2) whether it is desirable to—

(A) establish programs which foster interdisciplinary professional collaboration and collegial relationships between physicians and registered nurses, and what effects such programs would have on the ability of the Veterans' Administration to recruit and retain registered nurses;

(B) expand the administrative and supervisory responsibilities of the position of Chief of the Nursing Service, where such Chief has the requisite qualifications and experience, to include responsibility for support services and clinical departments other than nursing;

(C) create new alternatives for utilizing the skills and knowledge of registered nurses in furnishing direct-patient care and what effects this change would have on the ability of the Veterans' Administration to recruit and retain registered nurses and the cost of providing care to veterans;

(D) increase the pay differential for evening and night service to attract adequate numbers of qualified workers to these shifts and, as a result, provide the opportunity for consistent day shift positions;

(E) revise the grade, classification, pay, performance qualifications and other appropriate personnel management systems used in the Department of Medicine and Surgery; and

(F) establish flexible employment benefits programs for DM&S employees.

(b) Conduct of Pilot Program.—In conducting the pilot program under subsection (a) the Chief Medical Director shall—

(1) at not less than three sites, expand the administrative and supervisory responsibilities of the Chief of the Nursing Service to include responsibility for support services and clinical departments other than nursing;

(2) at not less than one site, establish a collaborative practice committee involving physicians, nurses, and, as appropriate, other direct health-care personnel;

(3) at not less than one site, significantly increase the pay differential for evening and night service;

(4) at not less than three sites, implement new alternatives for utilizing the skills and knowledge of registered nurses in the furnishing of direct-patient care;

(5) at not less than one site, establish systems alternative to or additional to the systems established under chapter 73 of title 38 or chapters 33, 43, 51, 53, 54, and 61 of title 5, United States Code, for grade, classification, pay, performance, qualifications, and other appropriate aspects of personnel management; and

(6) at not less than one site, establish flexible employment benefits programs alternative to or additional to the programs established under chapter 73 of title 38 or chapters 63, 79, 87, and 89 of title 5, United States Code.

(c) Reports.—(1)(A) Not later than June 30, 1990, the Chief Medical Director shall submit to the Administrator a report on the results of the first 12 months' experience under the pilot program required by subsection (a). The report shall contain—

(i) the evaluation of the Chief Medical Director of the effectiveness of each management practice undertaken in the pilot program on the Veterans' Administration's ability to recruit and retain health-care employees;

(ii) information on the cost factors associated with each such management practice;

(iii) an evaluation of the functioning and productivity of the employees involved in or affected in any substantial way by such practices;

(iv) in the cases of expansions of the responsibilities of the Chief of the Nursing Service pursuant to subsection (b)(1), information as to the supervision and support provided to all designated departments;

(v) any effects on the quality and timeliness of care provided to veterans; and

(vi) any planned administrative actions, and any recommendations for legislation, that the Chief Medical Director considers appropriate to include in the report on the basis of the results of such pilot program.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Administrator shall submit a copy of the report to the Committees on Veterans' Affairs of the Senate and the House of Representatives, together with any comments on the report and any recommendations for legislation that the Administrator considers appropriate to submit.

(2)(A) Not later than June 30, 1991, the Chief Medical Director shall submit to the Administrator a report on the results of the first 24 months' experience under the pilot program required by subsection (a). The report shall contain updates of all information provided in the report submitted pursuant to paragraph (1)(A) of this subsection and any recommendations for legislation that the Chief Medical Director considers appropriate to include in the new report.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Administrator shall submit a copy of the report to the Committees on Veterans' Affairs of the Senate and the House of Representatives, together with any comments on the report and any recommendations that the Administrator considers appropriate to submit.

(3)(A) Not later than June 30, 1992, the Chief Medical Director shall submit to the Administrator a final report on the pilot program required by subsection (a). The report shall contain—

(i) updates on all information provided in the reports submitted pursuant to paragraphs (1)(A) and (2)(A) of this subsection;

(ii) the Chief Medical Director's final assessment of the pilot program based on 36 months of operation; and

(iii) any recommendations for legislation that the Chief Medical Director considers appropriate to include.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a copy of the report together with—

(i) any comments on the report that the Administrator considers appropriate;

(ii) the Administrator's final assessment of the pilot program based on 36 months of operation; and

(iii) any recommendation for legislation that the Administrator considers appropriate to submit.

(d) The Chief Medical Director is hereby authorized to expend such appropriated funds as are necessary to carry out this section in fiscal years 1989, 1990, 1991, and 1992.

(e) Section 231(d) of Public Law 100-322 is repealed.

SEC. 626. CONVERSION OF NON-PHYSICIAN MEDICAL CENTER DIRECTORS TO THE SENIOR EXECUTIVE SERVICE.

(a) Section 4101(e) is amended by striking out "and persons appointed under section 4103(a)(8) of this chapter".

(b) Section 4103(a) is amended—

(1) by striking out paragraph (8); and

(2) by redesignating paragraph (9) as paragraph (8).

(c) Section 4107(c) is amended to read as follows:

"(c) Notwithstanding the provisions of section 4101(e) of this title, any person appointed under section 4103 of this title who is not eligible for special pay under section 4118 of this title shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.".

(d) Except as provided in paragraph (2), notwithstanding any other provision of law and without regard to the provisions of subsections (b) through (e) of section 3393 of title 5, each person holding an appointment as a director under section 4103(a)(8) of title 38, United States Code, on the day before the date of the enactment of this Act, shall, on such date, become a career appointee in the Senior Executive Service established pursuant to chapter 31 of title 5.

(2) Any person holding an appointment on the date of the enactment of this Act as such a director may, not later than 60 days after such enactment date, elect to

retain the terms and conditions of that appointment for as long as that person continues to serve as such a director.

(3) This section shall not result in a reduction in the pay of any person.

SEC. 627. DISCIPLINARY ACTIONS AND GRIEVANCES.

(a) Procedures for Cases Involving Lesser Penalties.—Section 4110 is amended—

(1) in subsection (a)—

(A) by striking out "of inaptitude, inefficiency, or misconduct" and inserting in lieu thereof "in disciplinary actions for performance or conduct during tenure with the Veterans' Administration, except with respect to matters described in subsection (f) of this section,"; and

(B) by adding at the end the following new sentence: "The Chief Medical Director may delegate the function of appointing a board to an employee of the Department of Medicine and Surgery who is not involved in deciding whether or not to file charges against the employee and who is not subordinate to any official involved in so deciding.";

(2) in the first sentence of subsection (d), by striking out "suitable" and all that follows and inserting in lieu thereof "that the proposed disciplinary action be sustained or modified within limitations prescribed by the Administrator."; and

(3) by adding at the end the following new subsection:

"(f)(1) An employee against whom disciplinary action consisting of a suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment is proposed is entitled to—

"(A) an advance written notice stating the specific reasons for the proposed action;

"(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(C) be represented by an attorney or other representative; and

"(D) a written decision and the specific reasons therefor at the earliest practicable date.

"(2) Actions taken under paragraph (1) of this subsection shall be subject to review under either the provisions of section 4120A of this title, in the case of employees appointed under authority of this title who are members of a bargaining unit recognized under chapter 71 of title 5, or an agency review procedure to be established by the Administrator, in the case of such employees who are not members of such a unit. Any such agency review procedure established by the Administrator shall include—

"(A) an informal review of the decison on the disciplinary action by an official of a higher level than the official who made the decision;

"(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the agency;

"(C) a prompt report of the findings and recommendations by the impartial exmainer; and

"(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the agency on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.".

(b) Grievances.—(1) Subchapter 1 of chapter 73 is further amended by adding at the end the following new section:

"§ 4120A. Grievances and certain disciplinary reviews

"(a)(1) For the purpose of resolving (A) grievances of employees appointed under authority of this title who are members of a bargaining unit recognized under chapter 71 of title 5, or (B) except as prescribed in paragraph (2), disciplinary actions as described in subsection 4110(f)(1) of this title involving such employees, the Administrator shall authorize review of agency actions on grievances or disciplinary actions under the procedures negotiated under the authority of chapter 71 of title 5.

"(2) In any matter, as determined by either party, involving disciplinary actions involving questions of clinical competence, the individual selected to arbitrate the matter must be qualified as an arbitrator and also be qualified as a physician, dentist, nurse, or otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues.

"(b) For the purpose of resolving grievances of supervisors and employees appointed under authority of this chapter who are not members of a bargaining unit recognzied under chapter 71 of title 5, the Administrator shall authorize review of agency action on such grievances pursuant to an agency review procedure as described in section 4110(f)(2).

"(c) For the purposes of this section, the term 'grievance' means a matter of concern by an employee appointed under this title (as may be negotiated under authority of chapter 71 of title 5) with respect to his or her employment but does not include matters similar to those excluded from grivance procedures under chapter 71 of title 5.".

(2) The table of sections at the beginning of chapter 73 is amended by adding at the end of subchapter I the following new item:

"4120A. Grievances and certain disciplinary reviews.".

TITLE VII—MISCELLANEOUS

SEC. 701. DEFINITION OF VIETNAM ERA.

(a) Expansion of Definition.—Section 101(29) of title 38, United States Code, is amended to read as follows:

"(29) The term 'Vietnam era' means—

"(A) the period beginning February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during such period; and

"(B) the period beginning August 5, 1964, and ending on May 7, 1975, in all other cases.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on October 1, 1988. No person shall be entitled to receive by reason of the amendment made by subsection (a) any benefits for any period before such date.

SEC. 702. EXTENSION OF AUTHORITY FOR REGIONAL OFFICE IN THE PHILIPPINES.

Section 230(b) is amended by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1992".

SEC. 703. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) Disclosure of Return Information.—Paragraph (7)(D) of section 6103(l) of the Internal Revenue Code of 1986 is amended—

(1) by striking out "and" at the end of clause (vi);

(2) by striking out the period at the end of clause (vii) and inserting in lieu thereof "; and";

(3) by adding at the end the following new clauses:

"(viii) (I) any needs-based pension provided under chapter 15 of title 38, United States Code, or any other law administered by the Veterans' Administration;

"(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

"(III) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of such title; and

"(IV) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total; except that, in such cases, only wage and self-employment information may be disclosed."; and

(4) by inserting before the period at the end of the heading "**or to the Veterans' Administration**".

(b) Protection Against Improper Use of Return Information.—(1) Chapter 53 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3117. Proection of benefit applicants and recipients from improper use of certain information

"(a)(1) In order to protect applicants for and recipients of the benefits and services described in paragraph (2) of this subsection from the improper use of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)(viii)), the Administrator may not terminate, deny, suspend, or reduce any such benefits or services of an individual until the Administrator has complied with the requirements in section 1137(c) of the Social Security Act (42 U.S.C. 1320b-7(c)), and such requirements shall be fully applicable in the case of such benefits and services.

"(2) The benefits and services described in this paragraph are—

"(A) needs-based pension benefits provided under chapter 15 of this title or any other law administered by the Veterans' Administration;

"(B) parents' dependency and indemnity compensation provided under section 415 of this title;

"(C) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of this title; and

"(D) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total.

"(b) In the case of compensation described in subsection (a)(2)(D) of this section, the Administrator may independently verify or otherwise act upon wage or self-employment data referred to in subsection (a) of this section only if the Administrator finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3116 the following new item:

"3117. Protection of benefits applicants and recipients from improper use of certain information.".

(c) Notification of Income Verification.—Not later than 90 days after the date of the enactment of this Act and prior to obtaining information from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, the Administrator of Veterans' Affairs shall notify applicants for and recipients of the benefits described in subsection (a)(2)(A), (B), and (D) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished by such applicants and recipients may be compared with information from the Commission of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. Thereafter, the Administrator shall notify all new applicants for such benefits and for services described under subsection (a)(2)(C) of such section 3117 that income information furnished by them may be so compared and shall periodically renotify all recipients of such benefits and services.

(d) Payment of Administrative Costs.—The costs incurred by the Administrator in obtaining, verifying, and using information disclosed pursuant to the amendments made by subsection (a) shall be paid for out of the Veterans' Administration's compensation and pension account, and amounts collected as a result of such actions shall be paid into such account.

SEC. 704. PROCUREMENT THROUGH LOCAL CONTRACTS.

(a) Effective Dates of Provisions Enacted in the Veterans' Benefits and Services Act of 1988.—Notwithstanding section 403(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322)—

(1) subsections (a) and (b)(2) of section 5025 of title 38, United States Code, shall not take effect until May 20, 1989; and

(2) subsection (d) of such section 5025 shall take effect on December 1, 1992.

(b) Transition Period.—During the period beginning December 1, 1988, and ending November 30, 1992—

(1) not later than February 1 of each year, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out section 5025 of title 38, United States Code, during the preceding fiscal year. The February 1, 1989, report shall contain information showing the percentage of the total of all health-care items procured by the Veterans' Administration in fiscal year 1988 through local contracts (as defined in subsection (e)(2) of such section) measured as a percent of total costs. The February 1, 1990, 1991, and 1992, reports shall contain information showing the percentage of the total of all health-care items procured by the Veterans' Administration and by each Veterans' Administration medical center in such fiscal year which were purchased through local contracts (as defined in subsection (e)(2) of such section), measured as a percent of total costs and, in the case of each medical center at which the percentage was greater than 20 percent, an explanation of the reasons why that occurred; and

(2) the definition of the term "health-care item" in such section 5025 shall be deemed not to include any item listed in, or (as determined by the Administrator of Veterans' Affairs) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73.

(c) Standardization.—Section 402 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322) is amended in the first sentence by striking out "medical and pharmaceutical items" and inserting in lieu thereof "health-care items (as defined in section 5025(e)(1) of title 38, United States Code".

SEC. 705. TECHNICAL CORRECTIONS.

(a) CORRECTIONS NECESSITATED BY AMENDMENTS MADE BY PUBLIC LAW 100-322.—(1) Section 603(a)(2)(B) is amended—

(A) by striking out "612(a)(4)" and inserting in lieu thereof "paragraphs (2), (3), or (4) of section 612(a)"; and

(B) by striking out "612(a)(5)" and inserting in lieu thereof "612(a)(5)(B)".

(2) Section 4114(a) is amended—

(A) in paragraph (1)—

(i) in clause (A), by inserting "pharmacists, occupational therapists," after "vocational nurses,"; and

(ii) in clause (B), by inserting "pharmacists and occupational therapists," after "vocational nurses,"; and

(B) in paragraph (3)(D) by striking out "the category" and all that follows through "vocational nurses" and inserting in lieu thereof "a category of personnel described in such section 4104(3)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a)(1) shall apply with respect to the furnishing of medical services by contract to veterans who apply to the Veterans' Administration for medical services after June 30, 1988.

(c) RATIFICATION.—Any action of the Administrator of Veterans' Affairs in contracting with facilities other than Veterans' Administration facilities for the furnishing of medical services (as defined in section 601(6) of title 38, United States Code), for the purpose described in section 612(a)(5)(B) of such title, to an individual described in paragraph (2) or (3) of section 612 of title 38, United States Code, who applied to the Veterans' Administration for such services during the period beginning on July 1, 1988, and ending on the date of the enactment of this Act is hereby ratified.

Amend the title so as to read:

An Act to increase the rates of compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans; to amend title 38, United States Code, to improve and extend various veterans' health and benefits programs authorities; and for other purposes.

INTRODUCTION

Bills

On January 26, 1988, S. 2011 was introduced by the Chairman of the Committee, Senator Alan Cranston, and was co-sponsored by Ranking Minority Members Frank H. Murkowski, Committee Members Spark M. Matsunaga, Dennis DeConcini, John D. Rockefeller IV, Alan K. Simpson, Strom Thurmond, and Arlen Specter, and by Senators John Melcher, Quentin N. Burdick, and Chic Hecht. Joining later as cosponsors were Committee Members George J. Mitchell and Bob Graham, and Senators Jeff Bingaman, Larry Pressler, and Claiborne Pell. As introduced, S. 2011 would have provided a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation (DIC) equal to the FY 1989 Social Security COLA.

Previously, on January 6, 1987, S. 9 was introduced by Chairman Cranston and was cosponsored by Committee Members Matsunaga, DeConcini, Mitchell, Rockefeller, Graham, and Senator Frank R. Lautenberg. Joining later as cosponsors were Senators Richard C. Shelby, Brock Adams, Dale Bumpers, Paul Simon, John B. Breaux, Pressler, Burdick, and Thomas A. Daschle. As passed by the Senate on December 4, 1987, as an amendment in the nature of a substitute for the text of H.R. 2616, S. 9 would have, in relevant part, first, tolled the eligibility periods for GI Bill and certain other education-benefits or rehabilitation programs for certain veterans and other eligible persons who have been prevented from participating in such programs because of drug or alcohol dependence or abuse disabilities; and, second, repealed the program under which education loans in the form of accelerated payments of educational assistance allowances were authorized for certain veterans contingent upon the veterans' State having established a matching fund program.

On January 6, 1987, S. 11 wsa introduced by Chairman Cranston and was cosponsored by Committee Members Simpson, Matsunaga, DeConcini, Mitchell, Rockefeller, and Robert T. Stafford, and Senators Edward M. Kennedy, William S. Cohen, Lawton Chiles, David Durenberger, Albert Gore, Jr., Pressler, James R. Sasser, John Heinz, John F. Kerry, Pete Wilson, Simon, Patrick J. Leahy, Carl M. Levin, Paul S. Sarbanes, Donald W. Riegle, Jr., Melcher, J. Bennett Johnston, Burdick, and Bingaman. Joining later as cosponsors were Senators Timothy E. Wirth, Daschle, Adams, Harry Reid, Lautenberg and Bumpers. S. 11 would, first, establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; second, apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the VA; third, provide for judicial review of certain final decisions of the Administrator of Veterans' Affairs; and, fourth, provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the VA. On July 7, 1988, the Committee reported S. 11 with an amendment in the nature of a substitute (S. Rept. No. 100-418) and on July 11 the Senate passed it as reported with a Committee technical amendment.

On July 21, 1987, S. 1510 was introduced by Senator Kerry and was cosponsored by Chairman Cranston. Joining later as cosponsors were Committee Members Rockefeller and Specter and Senators Joseph R. Biden, Jr., Burdick, Heinz, Simon, Gore, and Pell. S. 1510 would require the Administrator of Veterans' Affairs to contract with the National Academy of Sciences (NAS)—or, of the NAS declined, with another appropriate private nonprofit scientific entity—for the review of scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange and its component compounds and the production of a report by October 1, 1989, on the contractor's conclusions as to the weight of the evidence regarding the health effects in humans of exposure to Agent Orange.

On September 17, 1987, S. 1692 was introduced by Ranking Minority Member Murkowski. Joining later as cosponsors were Senators Hecht, Robert Dole, and John C. Danforth. S. 1692 would establish presumptions of service connection for veterans who were exposed to herbicides in Vietnam and develop non-Hodgkin's lymphoma.

On October 21, 1987, S. 1805 was introduced by Senator Mitchell. Joining later as cosponsors were Committee Members Rockefeller, Matsunaga and DeConcini, and Senator Burdick. S. 1805 would exclude payments received in settlement of the "Agent Orange" Product Liability Litigation from computation of income for purposes of certain needs-based VA pensions and health-care eligibility based on income status.

On February 29, 1988, S. 2105 was introduced by Senator Robert C. Byrd for Chairman Cranston and was cosponsored by Ranking Minority Member Murkowski. Joining later as a cosponsor was Committee Member Specter. S. 2105 would extend for four fiscal years, to September 30, 1992, the VA's authority to contract for drug and alcohol treatment and rehabilitation services for veterans in halfway houses and other community-based facilities.

On March 23, 1988, S. 2207 was introduced by Ranking Minority Member Murkowski. Joining later as a cosponsor was Committee Member Specter. S. 2207 would authorize the VA to provide assistive simians and dogs to veterans with service-connected quadriplegia.

On May 12, 1988, S. 2383 was introduced by Chairman Cranston and was cosponsored by Committee Members Matsunaga and Graham. S. 2383 would, first, extend eligibility for education benefits under the Vietnam-era GI bill to certain service academy and Senior Reserve Officer Training Corps graduates; second, permit students using VA educational assistance one instance of course withdrawal without a requirement to repay benefits; and, third, provide tutorial assistance for Post-Vietnam Era Educational Assistance Program and Montgomery GI Bill (MGIB) participants.

On May 16, 1988, S. 2396 was introduced by Senator Mitchell and was cosponsored by Chairman Cranston. Joining later as cosponsors were Committee Member DeConcini and Senator Burdick. S. 2396 would expand the period considered as the Vietnam era for title 38 purposes in the case of veterans who served in Vietnam so as to include the period beginning on February 28, 1961, and ending August 4, 1964 (the day before the current-law starting date).

On May 27, 1988, S. 2446 was introduced by Senator Rockefeller and was cosponsored by Chairman Cranston. Joining later as a cosponsor was Committee Member Graham. S. 2446 would, first, extend for one year, to September 30, 1990, the VA's authority to furnish respite care to certain chronically-ill veterans; and, second, extend by one year, to February 1, 1990, the date by which the Administrator is required to submit a report on the evaluation of the respite-care program.

On May 27, 1988, S. 2459 was introduced by Senator Rockefeller and was cosponsored by Chairman Cranston and Ranking Minority Member Murkowski. S. 2459 would extend by one year, to January 31, 1990, the period for the temporary programs of vocational training and health-care eligibility protection for certain veteran-pension recipients.

On May 27, 1988, S. 2462 was introduced by Chairman Cranston and was cosponsored by Committee Member Matsunaga, DeConcini, and Rockefeller. Joining later as a cosponsor was Committee Member Graham. S. 2462 would, first, extend entitlement for readjustment counseling to veterans who have served in hostilities after May 7, 1975, the end of the Vietnam era, and to World War II and Korean conflict veterans, with particular emphasis in the furnishing of counseling on the needs of those who served in combat; second, authorize $500,000 to be appropriated for each of fiscal years 1990 through 1992 for grants to the Veterans Memorial Medical Center (VMMC) to assist the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the VMMC; third, extend the Administrator's authority to contract with the VMMC for certain care and treatment of United States veterans in the Philippines; fourth, authorize the Administrator to appoint to Civil Service positions, without regard to the Civil Service register process described in subchapter I of chapter 33 of title 5, United States Code, certain newly-graduated, VA-trained health-care professionals; fifth, require the Director of the Office of Personnel Management, within 45 days after receipt, to concur with or disapprove of VA proposals for special-rate authorizations for tiltle 5 employees employed at VA health-care facilities; sixth, provide that the procedures set forth in title 5 for the resolution of specified lesser disciplinary actions be used in cases involving title 38 personnel and create for such personnel a grievance-resolution process that parallels that available to title 5 employees; seventh, expand the VA's authority to enter into agreements for sharing scarce medical resources; eighth, authorize the appropriation of $5 million for fiscal years 1989 and 1990 and $6 million for fiscal years 1991 and 1992 for grants to certain VA-affiliated health-professional educational institutions; ninth, require the Chief Medical Director (CMD) to conduct during calendar years 1989, 1990, and 1991, and submit reports on, pilot programs at not less than five VA medical facilities relating to the recruitment and retention of registered nurses and other scarce health-care professionals; and, tenth, mandate the submission by the CMD's Special Committee on Post-Traumatic Stress Disorder (PTSD) of three reports—the first, by April 1, 1989, setting forth the Committee's evaluation of the results of the Public Law 98-160 study on PTSD and other post-war psychological problems of Vietnam veterans, and the second and third, due February 1, 1990, and 1991, respectively, on the VA's overall effort to meet the needs of veterans with PTSD or other post-war psychological readjustment problems.

On May 27, 1988, S. 2463 was introduced by Chairman Cranston and was cosponsored by Ranking Minority Member Murkowski and Committee Members Matsunaga, Deconcini, Rockefeller, and Graham. S. 2463 would, first, authorize the appropriation of $3.125 million for fiscal year 1989 and $6.25 million for each of the following three fiscal years to establish and operate at up to five VA facilities Mental Illness Research, Education, and Clinical Centers modeled after VA Geriatric Research, Education, and Clinical Centers; and, second, require annual reports on program progress.

On June 14, 1988, S. 2511 was introduced by Chairman Cranston. S. 2511 would, first, require the VA to conduct, evaluate, and submit a report on a three-year—fiscal years 1989 through 1991—pilot program for providing assistive monkeys to veterans who have certain service-connected disabilities and are quadriplegic; and, second, require the conduct of a similar pilot program for the provision of signal dogs specially trained to provide hearing assistance to veterans with service-connected hearing impairments if the Administrator determines that current law would not authorize the provision of such signal dogs.

On June 16, 1988, S. 2521 was introduced by Committee Member Matsunaga. Joining later as a cosponsor was Senator Daniel K. Inouye. S. 2521 would require the VA to conduct a study of the prevalence and incidence of PTSD and other psychological problems suffered by Asian-American and Polynesian-American Vietnam veterans.

On April 11, 1988, S. 2267 was introduced by Chairman Cranston at the request of the Administration. S. 2267 would, first, provide automatic annual COLAs based on the Consumer Price Index for veterans' disability compensation and surviving spouses' and children's DIC; second, expand the annual clothing allowance to include cases in which veterans with service-connected skin condition use medications which stain or otherwise damage clothing; third, expand the existing exclusion of fire insurance proceeds from pension and parents' DIC income computations to encompass reimbursement from any source for property loss from any cause; fourth, restore to DIC beneficiaries receiving certain Social Security-equivalent benefits the benefits which were eliminated in the Omnibus Budget Reconciliation Act of 1981 and restored in 1982 to Social Security recipients but not to these DIC beneficiaries; fifth, authorize the Administrator to request offsets against military retired or retainer pay to collect overpayments of disability compensation or pension benefits; sixth, authorize the Administrator to offset VA disability compensation or pension to collect overpayments of military retired pay and retainer pay; seventh, authorize the VA to require mandatory disclosure of claimants' and dependents' Social Security numbers in all applications for VA disability and death benefits; and, eighth, extend for four years, until September 30, 1992, the Administrator's authority to maintain a regional office in the Republic of the Philippines.

On April 11, 1988, S. 2268 was introduced by Chairman Cranston at the request of the Administration. S. 2268 would, first, reduce eligibility requirements for the plot allowance to provide for its payment on the same basis as payment of the burial allowance; second, permit payment of the headstone or grave marker allowance or reimbursement to the estate of a veteran who paid for the memorial prior to his or her death; third, extend for five years, through fiscal year 1994, the authorization of appropriations for matching grants under the State cemetery construction program; and, fourth, repeal the limit on the amount of matching-grant funds that may be awarded to any one State.

On April 18, 1988, S. 2294 was introduced by Chairman Cranston at the request of the Administration. S. 2294 would, first, make permanent the VA's authority to contract for drug and alcohol treatment and rehabilitation services for veteran in halfway houses and other community-based facilities; second, eliminate the requirement that the Administrator monitor and evaluate the performance of, and maintain detailed records on, each such contract facility; third, extend for two years, through September 30, 1991, the VA's authority to provide respite care services; fourth, clarify that the VA has the authority to pay for emergency medical services for veterans participating in a chapter 31 vocational rehabilitation program when the veteran cannot reasonably obtain medical care through VA or other Government facilities; fifth, extend for five years, through September 30, 1994, the President's authority to authorize the Administrator to contract with the VMMC in the Philippines for the care of United States veterans; sixth, extend for five years, through 1994 the authorization of appropriations for $500,000 per year for grants to the VMMC and permit $50,000 of the grants to be used for the education and training of VMMC personnel; seventh, increase the per diem rates the VA pays to States for the care of veterans in State homes; eighth, authorize the VA to provide scholarships in any field of training or study in direct health-care services and modify the period of obligated VA service for newly-included participants; ninth, authorize the VA to reimburse VA nurses for tuition expenses incurred in pursuing professional courses leading to nursing degrees; tenth, extend for three years, through September 30, 1992, the authorization of appropriations for the State home construction grant program; and, eleventh, extend for two years, to September 30, 1991, the date by which the VA is required to report to Congress on its evaluation of the respite care program.

On April 21, 1988, S. 2307 was introduced by Chairman Cranston at the request of the Administration. S. 2307 would, first, make cooperative training available both to veterans entitled to educational assistance under the MGIB-Active Duty and those entitled under the Post-Vietnam Era Veterans' Educational Assistance (VEAP) program; second, change the secondary school credentialing requirements for MGIB eligibility; third, restore in certain circumstances military pay withheld under the MGIB; fourth, permit certain veterans eligible for MGIB benefits to elect the rate of basic educational assistance allowance; fifth, authorize the use of certain State or local government agencies to provide uncompensated training or work experience for participation in a chapter 31 vocational rehabilitation program; sixth, provide for limitations on payment of VEAP benefits to certain incarcerated veterans; seventh, provide for a change in the conversion of credit-hours to clock-hours for purposes of measuring course enrollment in certain non-degree courses; eighth, extend for four years, until December 31, 1993, the existence of the Veteran's Advisory Committee on Education and add a representative of the Department of Defense as an ex officio member; and, ninth, provide for a uniform policy with regard to remedial, refresher, or deficiency courses under VA-administered programs of educational assistance.

On May 13, 1988, S. 2394 was introduced by Chairman Cranston at the request of the Administration. S. 2394 would authorize the Administrator to appoint to certain Civil Service positions, without regard to the Civil Service register process described in subchapter I of chapter 33 of title 5, certain newly-graduated, VA-trained, health-care professionals.

On May 19, 1988, S. 2419 was introduced by Chairman Cranston at the request of the Administration. S. 2419 would, first, repeal the requirement that the Administrator set the maximum interest rate on VA guaranteed or insured home loans; second, modify the procedures for the sale of vendee loans by the VA; third, eliminate the requirement that VA standards for manufactured home sites include requirements to encourage the development of attractive residential areas; fourth, repeal the requirement that the VA conduct certain inspections of manufactured homes purchased with VA financing; fifth, authorize the Administrator to suspend from participation in the manufactured home loan program manufacturers engaging in unfair or prejudicial practices; sixth, repeal the prohibition against the VA paying a claim under a guaranty of a manufactured housing loan until after the liquidation sale; seventh, repeal the requirement for a statement of local officials regarding the feasibility of public or community water and sewerage systems as a condition for VA loan guaranties for newly-constructed homes; eighth, expand the VA's authority to collect home loan debts by offsetting a debtor's Federal tax refund; and, ninth, impose a limit on the period during which a veteran may request a waiver of a loan guaranty debt.

On May 27, 1988, S. 2464 was introduced by Chairman Cranston at the request of the Administration. S. 2464 would, first, provide authority for payment of interest on insurance settlements; and, second, permit increased discount rates for insurance premiums paid in advance.

Hearings

On April 28, 1988, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on S. 11 and on S. 2292, a bill introduced by Ranking Minority Member Murkowski, on April 18, 1988, relating to judicial review. Testimony was received from Senators Kerry and Daschle; Mr. Donald L. Ivers, General Counsel of the VA; Ms. Susan Bennett, Mr. Eugene Fidell, Mr. Keith Rosenberg, Washington, D.C. attorneys; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Vietnam Veterans of America, the Judicial Conference of the United States, the American Veterans Committee, the National Association of Radiation Survivors, the National Vietnam Veterans Coalition, and the Veterans for Due Process. Testimony also was submitted for the record of the hearing by the Justice Department, the American Bar Association, the American Civil Liberties Union, the Jewish War Veterans of the United States of America, Inc., the National Association of Atomic Veterans, the Non Commissioned Officers Association of the United States of America, the Administrative Conference of the United States, and Mr. Jerry L. Mashaw, Professor of Law, Yale University.

On May 12, 1988, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on Agent Orange-related oversight issues and legislation—S. 1692 and S. 1787. Testimony was received from Senators Daschle and Kerry; Mr. Thomas E. Harvey, Deputy Administrator of Veterans' Affairs; Mr. Don M. Newman, Chair, Agent Orange Working Group of the Domestic Policy Council; Dr. James O. Mason, Director, Centers for Disease Control; Major General Alexander M. Sloan, Deputy Surgeon General, U.S. Air Force; Admiral E.M. Zumwalt, Jr., former Chief of Naval Operations and former Commander, Naval Forces, Vietnam; Dr. Sheila Zahm, Epidemiologist, National Cancer Institute; Dr. Donald Barnes, Science Advisory Board Director, Environmental Protection Agency; Mr. Robert W. Long, Deputy Assistant Secretary for Science and Education, Department of Agriculture; Ms. Hellen Gelband, Senior Analyst, Office of Technology Assessment; Mr. Oliver Meadows, Chairman, Veterans' Advisory Committee on Environmental Hazards; and Mr. Christopher Gregory, a Vietnam veteran; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Vietnam Veterans of America, the National Association of Agent Orange Survivors, the National Coalition of Vietnam Veterans, the Ranch Hand Vietnam Association, the National Association of State Agent Orange Programs, and the Vietnam Veterans Agent Orange Victims. Testimony also was submitted for the record of the hearing by the Veterans of the Vietnam War, the Oklahoma Agent Orange Foundation, the National Home Study Council, and Mr. Joe Cole, a Vietnam veteran.

On May 25, 1988, the Committee held a hearing, chaired by Senator Matsunaga, to receive testimony on veterans' educational assistance legislation—S. 1997, S. 2307, S., 2383, and S. 820. Testimony was received from Senator Daschle; Mr. R. John Vogel, Chief Benefits Director of the VA; Mr. Stephen M. Duncan, Assistant Secretary for Reserve Affairs, Department of Defense; and representatives of The American Legion, the Veterans of Foreign Wars, the Paralyzed Veterans of America, the Non-Commissioned Officers Association, the Fleet Reserve Association, the Association of the United States Army, the National Association for Uniformed Services, the American Association of State Colleges and Universities, the American Association of Community and Junior Colleges, the National Association of Veterans Program Administrators, and the National Association of Veterans' Upward Bound Project Personnel. Testimony also was submitted for the record of the hearing by the Retired Officers Association, the Reserve Officers Association of the United States, the AMVETS, and the Aircraft Owners and Pilot Association.

On June 9, 1988, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on compensation-related legislation—S. 2011, S. 2105, and S. 1805; various administration proposals relating to compensation and other VA programs—S. 2267, S. 2268, S. 2269, section 2 of S. 2294, and S. 2306; and oversight of the Board of Veterans Appeals. Testimony was received from Mr. Donald Ivers, General Counsel of the VA; Mr. Kenneth Eaton, Chairman of the VA's Board of Veterans Appeals; Mr. Kenneth R. Feinberg, Court-Appointed Special Master, "Agent Orange" Product Liability Litigation; Mr. Ed Bartholomew, Director, Friendship House, Baltimore, Maryland; Mr. Marc Rosenbaum, Executive Director, Our Family, Inc., Napa, California, whose testimony was read by Mr. Doug Chiappetta, Director of Therapeutic Communities of America; Dr. Martin B. Koretzsky, Chief of Psychology Services, Fort Howard, Maryland, VA Medical Center; and Dr. Paul Errera, Director, Mental Health and Behavioral Sciences Service, of the VA's Department of Medicine and Surgery; and representatives of The American Legion, the Veteran's of Foreign Wars, the Disabled Americans Veterans, the Paralyzed Veterans of America, the Gold Star Wives of America, and the Vietnam Veterans of America. Testimony also was submitted for the record of the hearing by the American Ex-Prisoners of War and the AMVETS.

On June 16, 1988, the Committee held a hearing, chaired by Senator Rockefeller, to receive testimony on legislation relating to health-care legislation—S. 2462, S. 2463, S. 2207, and S. 2446; other benefits legislation—S. 2396 and S. 2459; various administration proposals relating to health-care and the home loan, cemetery and insurance programs—S. 2293, S. 2294, S. 2394, S. 2419, and S. 2464; and oversight of the VA's vocational rehabilitation program. Testimony was received from Mr. Donald Ivers, General Counsel of the VA; Dr. Dennis Wyant, Director, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, VA; and Dr. M.J. Willard, Director, Helping Hands: Simian Aides for the Disabled; and representatives from the American Nurses Association, the American Association of Colleges of Nursing, the Nurses Organization of the Veterans' Administration, Creative Nursing Management, the American Psychiatric Association, the National Association of Veterans' Administration Chiefs of Psychiatry, the American Psychological Association, The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, and the Paralyzed Veterans of America. Testimony also was submitted for the record of the hearing by the National Association of Home Builders, the Mortgage Bankers Association of America, the National Association of Realtors, the Canine Companions for Independence, the AMVETS, and The Puerto Rican Organization of Registered Nursing.

On July 14, 1988, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on PTSD-related oversight issues and legislation, relating to PTSD treatment, which the Committee on June 29, 1988, had ordered reported as part of S. 2011. Testimony was received from Dr. William E. Schlenger and Dr. Richard A. Kulka, Co-Principal Investigators, Research Triangle Institute; Dr. Vernon N. Houk, Director, Center for Environmental Health and Injury Control, CDC; Dr. Roger Hamada, Research Associate, Honolulu, Hawaii, VA Regional Office; Mr. David P. Baine, Associate Director, Human Resources Division, General Accounting Office; Dr. Matthew Friedman, Chairman, Veterans' Administration Advisory Committee on PTSD, White River Junction, Vermont VA Medical Center (VAMC); Dr. Patrick Boudewyns, Chief of Psychology, Augusta, Georgia, VAMC; Ms. Joan Furrey, Associate Chief, Nursing Service, Nursing Home Care Unit, Bay Pines, Florida, VAMC; Mr. Fred Gusman, Director, PTSD Treatment Program, Palo Alto, California, VAMC; Mr. Ray Scurfield, Director, PTSD Treatment Program, American Lake, Tacoma, Washington, VAMC; Mr. Bob Rheault, Outward Bound Program, Rockland, Maine; Dr. Stephen Sonnenberg, Joint Commission on Public Affairs, American Psychiatric Association; Mr. Bob Comeau, Team Leader, Portland, Maine, Vet Center; Mr. Obed Fernandez, Team Leader, Fresno, California, Vet Center; Mr. Bob Meredith, Team Leader, Cheyenne, Wyoming, Vet Center; Mr. Harry Doughty, Team Leader, New Orleans, Louisiana, Vet Center; Mr. Ray Field, Chairperson, VA Advisory Committee on Native Americans and Native Hawaiians; and Dr. John A. Gronvall, Chief Medical Director of the VA; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Vietnam Veterans of America, and the American Ex-Prisoners of War.

On March 17, 1988, the Committee ordered favorably reported to the Senate, as an original bill, provisions developed by Chairman Cranston and Ranking Minority Member Murkowski that would require disclosure to the VA of certain Internal Revenue Service and Social Security Administration data for income-verification purposes in connection with VA needs-based pension programs. The Committee's action was based on a March 16, 1988, report, entitled "Veterans' Pensions: Verifying Income with Tax Data Can Identify Significant Payment Problems", by the General Accounting Office (GAO/HRD-88-24), which had been requested by Senator Murkowski on September 10, 1985.

As originally ordered reported, the bill was applicable only to the VA needs-based pension program. However, at its June 29 meeting (discussed below), the Committee ordered the bill amended, as proposed by Senators Cranston and Murkowski, so as also to be expressly applicable to the following VA programs: needs-based parents' dependency and indemnity compensation, health-care services based on certain income standards, and service-connected disability compensation benefits paid at the total-disability-rating level as the result of an individual determination of unemployability. The original bill, S. 2611, was reported by the Committee on July 6, 1988 (S. Rept. No. 100-412) and was, by virtue of a unanimous consent agreement entered into in the Senate on July 7, 1988 (page S9080 of the Congressional Record), referred to the Committee on Finance on that date. That Committee's Subcommittee on Taxation and Debt Management heard testimony on S. 2611 on July 12.

After carefully reviewing the testimony from these hearings, the Committee met in open session on June 29, 1988, and voted unanimously to report S. 2011 favorably to the Senate with an amendment in the nature of a substitute which incorporated the provisions of S. 2611 as reported, provisions of title I of S. 11 relating to the Board of Veterans' Appeals, and provisions derived from virtually all of the bills the introduction of which is noted above, as well as from original proposals by Chairman Cranston and Ranking Minority Members Murkowski and other members.

SUMMARY OF S. 2011 AS REPORTED

S. 2011 as reported (hereinafter referred to as the "Committee bill") has 7 titles: Compensation and Related Benefits; Agent Orange and Related Provisions; Education and Rehabilitation; Miscellaneous Benefits Provisions; Board of Veterans Appeals; Health Care; and Miscellaneous, as follows:

TITLE I—COMPENSATION AND RELATED BENEFITS

This title contains amendments to chapters 11 and 13 of title 38 and freestanding provisions that would:

(1) Require the Administrator of Veterans' Affairs to adjust, effective December 1, 1988, the rates and limitations for compensation paid to veterans with service-connected disabilities and dependency and indemnity compensation (DIC) paid to certain service-connected-disabled veterans' survivors by the same

percentage (estimated at this time by the Congressional Budget Office to be 4.5 percent), as that paid to Social Security recipients and VA pension beneficiaries effective on that same date, with the increased rates rounded down to the nearest dollar (section 101).

The basic adjustment would apply to:

(a) basic compensation rates for service-connected disabled veterans and the rates payable for certain severe disabilities;

(b) the allowances for spouses, children, and dependent parents paid to service-connected disabled veterans rated 30-percent or more disabled;

(c) the annual clothing allowance paid to veterans whose compensable disability requires the use of a prosthetic or orthopedic appliance (including a wheelchair) that tends to tear or wear out clothing; and

(d) the DIC rates paid to:

(i) surviving spouses of veterans whose deaths were service connected;

(ii) surviving spouses for dependent children and surviving spouses who are so disabled as to be in need of regular aid and attendance or to be permanently housebound; and

(iii) the children of veterans whose deaths were service connected where no surviving spouse is entitled to DIC, the child is age 18 through 22 and attending an approved educational institution, or the child is age 18 or over and became permanently incapable of self-support prior to reaching age 18.

(2) Expand the annual clothing allowance to include cases in which veterans with certain skin conditions use medications which stain clothing (section 102).

TITLE II—AGENT ORANGE AND RELATED PROVISIONS

This title contains amendments to title 38, Public Laws 96-151, 98-160, and 98-542, and freestanding provisions that would:

1. Provide for the payment of disability or death benefits, effective January 15, 1989, equal to VA service-connected disability compensation and DIC, in the cases of Vietnam veterans having non-Hodgkin's lymphoma (NHL), or their survivors, if applications for these benefits are submitted not later than six months after the results of the Centers for Disease Control's Selected Cancers Study (SCS) are submitted to the VA (section 202).

2. Authorize the Administrator to suspend the awarding of such benefits with respect to new applications if, after receiving the reports on the SCS by the Office of Technology Assessment (OTA) and the Veterans' Advisory Committee on Environmental Hazards (EHAC), the Administrator finds that the SCS results together with any other scientific evidence then available do not support an association between NHL and service in Vietnam (section 202).

3. Presumptively service connect chloracne for Vietnam veterans where it or another acneform skin disease consistent with chlor-

acne appeared within one year after service in Vietnam (section 203).

4. Extend for 15 months, from September 30, 1989, to December 31, 1990, VA health care eligibility for Agent Orange- and radiation-exposed veterans (section 204).

5. Exclude from computation of income for purposes of VA needs-based pension and parents' DIC and veterans' health-care eligibility based on financial status, payments received in settlement of or as the result of a judgment in litigation based on injuries or disabilities alleged to have been incurred as a result of events that occurred during the active-duty service of the veteran, as long as the annual amount of such payments do not exceed the annual income limits set for pension benefits for a veteran with the same marital status and number of dependents (section 205).

6. Require the Administrator (a) to contract for a comprehensive review—by the National Academy of Sciences (NAS) or, if the NAS declines, another appropriate private, nonprofit, scientific entity—of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange and its component compounds and for a report, due by October 1, 1989, on the review's results and the contractor's conclusions as to the weight of the evidence on such effects, and (b) within 60 days after receiving the NAS report, to decide whether the VA's regulations regarding compensation for diseases based on Agent Orange exposure should be amended and to advise the House and Senate Veterans' Affairs Committees of that decision (section 206).

7. With respect to studies described in Public Law 96-151—which, as expanded in Public Law 97-72, requires an epidemiological study of any long-term adverse health effects in humans of service in Vietnam—

> (a) Require the EHAC and the OTA to review the reports submitted upon completion of each of the studies and provide written reports on each to the VA and the two Veterans' Affairs Committees within 60 days after receipt of each report (section 207).
>
> (b) Require the Administrator to decide within 60 days after receiving both the EHAC and OTA reports whether the VA's regulations on Agent Orange should be amended and to advise the Committees of that decision and the reasons therefor (section 207).

(The same procedures also would be established with respect to studies on the health effects of exposure to ionizing radiation described in Public Law 98-160 and the VA regulations pertaining to compensation based on such exposure.)

8. With respect to studies not described in Public Law 96-151, require the Administrator, within 60 days after receiving a report from the EHAC based on any such study recommending that the VA Agent Orange Regulations be amended, to decide whether the regulations should be amended and to advise the two Veterans' Affairs Committees of that decision and the reasons therefor (section 207).

TITLE III—EDUCATION AND REHABILITATION

This title contains provisions to make various improvements in VA programs of education and vocational rehabilitation.

Part A—Rehabilitation for Veterans with Service-Connected Disabilities

Part A of this title contains amendments to chapters 11 and 31 of title 38 that would:

1. Allow the use of State and local government agencies, supported in whole or in part with federal funds, to provide uncompensated training or work experiences for service-disabled veterans' programs of vocational rehabilitation under chapter 31 (section 301).
2. Allow, under certain conditions, the use of for-profit organizations to provide employment assistance to disabled veterans and against using for-profit organizations to conduct programs of independent living services for severely handicapped veterans (section 302).
3. Extend for one year, through January 1, 1990, the temporary program of trial work periods and vocational-rehabilitation evaluation, for veterans receiving compensation at the rate paid to totally disabled veterans based on a determination of individual unemployability (section 303).

Part B—Education Programs

Part B of this title includes amendments to chapters 30, 31, 32, 34, and 35 of title 38 and chapter 106 of title 10 that would:

Subpart 1—Montgomery GI Bill Provisions

1. Provide entitlement of one month of educational assistance for each month of active duty served for a Montgomery GI Bill (MGIB) participant who (a) is discharged from military service (i) for a preexisting medical condition which the Administrator determines is not service connected or (ii) involuntarily, for reasons beyond the participant's control, due to a reduction in force (RIF), and (b) as a result, does not meet the length-of-service requirement for MGIB entitlement—20 months on active duty of a 24-month enlistment or 30 months on active duty of a 36-month enlistment (section 311).
2. Provide servicemembers who first entered active duty during the period July 1, 1985, through June 30, 1988, and elected not to enroll in the MGIB with a one-time 120-day open period beginning on December 1, 1988, during which they may withdraw such elections and become MGIB participants by agreeing to serve an additional two years on active duty (section 312).
3. Modify the secondary-school diploma/equivalency certificate requirement for MGIB participants to permit the Secretary of Defense to prescribe regulations under which the Secretaries of the service branches may determine what is an adequate equivalent (section 313).
4. Extend, from June 30, 1988, until the date on which a veteran begins to pursue a program of education with MGIB assistance, the deadline by which a Vietnam-era veteran who otherwise qualifies for combined Vietnam-era GI bill and MGIB benefits must obtain a

secondary school diploma (or an equivalent) in order to use such benefits (section 313).

5. Permit MGIB participants who have completed 2 years on active duty and commenced service in the Selected Reserve but, prior to completing their Reserve obligation, are discharged due to disability to elect to receive entitlement based on either their active duty service alone or the combination of active and reserve service (section 314).

Subpart 2—Provisions Relating to Montgomery GI Bill and Certain Other Programs

1. Authorize pursuit of refresher, remedial, and deficiency courses under chapters 30 (MGIB), 32 (Post-Vietnam Era Veterans' Educational Assistance Program—VEAP) and 35 (Service-Connected Dependents' and Survivors' Educational Assistance) of title 38 and chapter 106 (MGIB based solely on Selected Reserve Service) of title 10 without a charge to entitlement for up to five months and beyond that with a charge to entitlement, and require by February 1, 1991, a report on the use of these courses with and without entitlement (section 321).

2. Make MGIB and VEAP participants eligible for individualized tutorial assistance and increase the monthly tutorial allowance from $84 to $100 and the overall maximum from $1,008 to $1,200 (section 322).

3. Provide for a charge to entitlement at a rate equal to the proportion that 50-percent of the tutorial assistance paid bears to the full time rate for monthly educational assistance allowance—for the use of tutorial assistance under chapters 30, 32, and 35 (section 322).

4. Provide for pursuit of cooperative training benefits to MGIB and VEAP participants after their release from active duty, with benefits paid at the rate of 80 percent of the basic full-time monthly rate otherwise payable and with entitlement charged at the same rate (section 323).

5. Toll the eligibility periods for VA education-benefits or rehabilitation programs for certain veterans and other eligible persons who have been prevented from participating in such programs because of drug or alcohol dependence or abuse disabilities from which they have recovered sufficiently to participate in such programs (section 324).

Subpart 3—Administrative and Miscellaneous Provisions

1. Permit a student who is using VA education benefits a one-time opportunity to withdraw from a course or courses without regard to mitigating circumstances (not exceeding 6 semester hours or the equivalent) without being required to repay the benefits paid for the period prior to the effective date of the reduction in the award for the course or courses (section 331).

2. Require that contract educational and vocational counseling services for participants in all VA-administered education, and vocational training programs other than chapter 31, be funded under the VA's Readjustment Benefits appropriations account up to a total of $5 million annually (section 332).

3. Simplify the formula for determining whether a student receiving VA-administered educational assistance is engaged in full-time study when pursuing a non-college-degree course which is offered by an institution of higher learning and for which the institution requires one or more unit courses or subject creditable toward a college degree (section 333).

4. Limit the amount of educational assistance payable to a VEAP participant who is serving a sentence in a Federal, State, or local penal institution for conviction of a felony (section 334).

5. Extend the existence of the Veterans' Advisory Committee on Education for four years, to December 31, 1993, and add to its membership the Chairman of the Commission to Assess Veterans' Education Policy (section 335).

6. Make eligible for Vietnam-era GI Bill benefits individuals who (a) before January 1, 1977, commenced their third academic year as cadets or midshipmen at one of the service academies or as members of the Senior Reserve Officers Training Corps (SROTC); (b) served on active duty for more than 180 days after graduation from one of the academies, or upon completing the SROTC program; (c) if separated from active duty, were discharged or released under conditions other than dishonorable; and (d) enrolled in VEAP (section 336).

7. Repeal certain expired education loan authorities (section 337).

Part C—Non-service Connected Disability Pension Recipients' Vocational Training Program

Part C of this title contains amendments to chapter 15 of title 38 that would extend for one year, from Janaury 31, 1989, until January 31, 1990, the temporary programs of vocational training for certain new pension recipients and of three-year protection of veteran-pensioners' VA health-care eligibility if they lose pension entitlement as a result of work income (section 341).

TITLE IV—MISCELLANEOUS BENEFITS PROVISIONS

This title contains provisions that would make improvements in various VA benefits programs.

PART A—INSURANCE PROGRAMS

Part A of this title contains amendments to chapter 19 of title 38 that would:

1. Authorize the VA to pay interest on insurance settlements from the date a policy matures to the date of payment of proceeds, and would apply to National Service Life Insurance (NSLI), Veterans Special Life Insurance (VSLI), Veterans Reopened Insurance (VRI), and United States Government Life Insurance (section 401).

2. Authorize the VA to adjust discount rates for premiums paid in advance on NSLI, VSLI, and VRI policies, although no adjustments could be made below the discount rates currently authorized for each program (3%, 2.5%, and 3.5% respectively). Adjustments could be made only if the Administrator determines that they are administratively and actuarially sound (section 402).

Part B—State Cemetery Construction Grants

Part B of this title contains an amendment to chapter 24 of title 38 that would extend for five years, through fiscal year 1994, the authorization of appropriations (of "such funds as may be necessary") for grants for the construction of state veterans' cemeteries (section 411).

Part C—Home Loan Guaranty Program

Part C of this title contains an amendment to chapter 53 of title 38 that would clarify that waivers of VA home loan debts are available for active-duty service personnel (section 421).

TITLE V—BOARD OF VETERANS' APPEALS

This title would amend title 38 to provide for changes to the operations of the Board of Veterans' Appeals (BVA) which would:

1. Remove the provision making the Chairman directly responsible to the Administrator (section 501).
2. Encourage the Board of Veterans' Appeals (BVA) to dispose of appeals before it in a timely manner (section 502).
3. Require the President, by and with the advice and consent of the Senate, to appoint the Chairman for a term of five years. An individual may serve as Chairman for no more than three complete terms. The Chairman may be removed by the President for good cause (section 503).
4. Require the Chairman to appoint Board members for a term of nine years and designate as Vice-Chairman one of the Board Members. A member appointed to fill a vacancy, whether caused by resignation, death, or removal, would serve for the remaining unexpired term. Allow Board members to be removed by the Chairman for good cause, subject to the due process protections in title 5 relating to adverse personnel actions (section 503).
5. Require the President to appoint the Chairman no later than one year after the date of the enactment of this bill and allow the serving Chairman to continue until his successor is appointed. If the serving Chairman is appointed, none of the time served prior to the appointment would count in calculating the terms he or she may serve (section 503).
6. Provide that of the first Board members appointed, 21 would be appointed for a three-year term, 22 for a six-year term, and 22 for nine-year term. An individual who is serving as a member of the Board may continue to serve until the earlier of the date on which the individual's successor is appointed or the expiration of 180-day period after the Chairman is appointed (section 503).
7. Require that the Chairman be paid at Executive Level IV (section 504).
8. Require that the Chairman to report to the Congressional Committees on Veterans' Affairs annually on the Board's current and future workload and its ability, based on then current and projected staffing, to dispose of appeals in a timely manner (section 505).

9. Eliminate any direct or indirect bonuses (in addition to salary) relating to service on the Board for Board members or acting or temporary members (section 506).

10. Require a final determination to be a unanimous vote for a denial and a majority vote for an allowance, preclude a temporary or acting member from casting a vote in any case where the votes of the two regular members are split and require the Chairman to expand the Board Section by at least two members upon such a split (section 507).

11. Require the Board to provide a claimant with notice and an opportunity for a hearing before making a decision based exclusively on evidence and material of record and applicable provisions of law (section 508).

12. Make a technical correction in the description of the Board's authority to reopen a claim by deleting (as inconsistent with present practice) the present requirement that new and material evidence sufficient to reopen a claim be in the form of official reports from the proper service department (section 509).

13. Expand the present requirement that Board decisions be in writing and contain findings of fact and conclusions of law separately stated, to require that such decisions include findings and conclusions and reasons and bases therefor, on all material issues of fact, law, and matters of discretion, as well as an order granting or denying relief (section 510).

14. Require prompt mailing of the decision in a case to the claimant and the claimant's representative (section 510).

15. Codify current Board practice, as testified to be the Board Chairman, under which the claimant shall not be presumed to agree with any statement of fact or law contained in the Statement of the Case unless the claimant specifically expresses agreement (section 511).

16. Expressly provide a claimant before the Board with the right, upon request, to have the Board acquire an independent expert medical (IME) opinion when there is a substantial disagreement between the substantiated findings or opinions of two physicians on an issue material to the outcome of the case and with the right to appeal a denial of a request to the Chairman. Notice of any Board decision to deny such a request, the basis for such denial, and the right to appeal a denial to the Chairman would have to be provided to the claimant and the claimant's representative but such decision would not be subject to judicial review (section 512).

17. Require notice to a claimant of any consultation (including an IME consultation) with a physician, other than the physician on the Board Section deciding the case, along with the results of that consultation and provide 60 days in which the claimant may respond to the opinion. The information gained through this process would be required to be included in the discussion of evidence in the final decision (section 512).

18. Authorize the Administrator and the Board to administer oaths and affirmations, examine witnesses, and receive evidence in VA claims adjudication proceedings (section 513).

19. Privide for the admission, even if inadmissible under the rules of evidence applicable in court, of all evidence submitted in VA claims adjudication proceedings subject only to such provisions

as the Administrator or Chairman, depending upon the forum, may impose through regulations for the exclusion of irrelevant, immaterial, or unduly repetitious evidence (section 513).

20. Provide that, in the course of hearings on a claim for VA benefits following initial denial of the claim, the claimant (or other party) shall have the right to review and, on the payment of a fee (waivable by the Chairman of the Board, pursuant to regulations that the Administrator must prescribe, on the basis of inability to pay or for other good cause shown) limited to the costs of duplication, to obtain copies of the case files and all materials to be used by the VA at the hearing, to present witnesses and evidence including medical opinions and rebuttal evidence, to make arguments and to submit written contentions, and to submit to any person written interrogatories which must be answered unless written objections thereto are filed. If the person served with interrogatories files an objection thereto, the Chairman of the Board must, pursuant to regulations that the Chairman must prescribe, evaluate the objection and issue an order directing that answers be given or stating that they need not be given. If the person served with interrogatives fails to comply with such an order or, in the absence of an objection, to answer the interrogatories, the party who served the interrogatories would have the right, upon a statement or showing of good cause, to have the Chairman issue a subpena (enforceable in Federal district court) for the witness' attendance at a deposition at which the unanswered interrogatories would be asked (section 513).

21. Provide that a claimant may request a hearing before a traveling section of the Board. Scheduling of such cases will be on a first-come, first-served basis (section 513).

22. Provide that if a claimant requests a hearing before a travel section of the Board, but due to the limited number of hearings available, is unable to receive such a hearing, the Board shall afford the claimant an opportunity for a hearing conducted by telephone or closed circuit television before a BVA panel or in a videotaped hearing before VA Regional Office adjudicating personnel acting for the Board (section 513).

23. Allow, in the course of any claims proceeding, any VA employee to disqualify himself or herself on the basis of personal bias or other cause and a party to challenge such an employee on such basis (section 513).

24. Specify the materials that must be included in the record of VA claims adjudication proceedings and be available for the claimant's inspection and be copied for the claimant upon the payment of a fee (waivable by the Chairman, pursuant to regulations that the Chairman must prescribe, on the basis of claimant's inability to pay or for other good cause shown) limited to the cost of duplication (section 513).

25. Specify that the adjudication rights contained in title 38 and prescribed thereunder by the Administrator or Chairman are exclusive (section 513).

26. Require the Administrator and the Chairman, at each stage of claims adjudication proceedings before the VA and the Board, to provide the claimant with detailed written notice, in easily under-

standable language, of the claimant's procedural rights (section 514).

27. Codify the present practice that retroactive awards may be made for claims reopened and allowed on the basis of new and material evidence in the form of service records (section 515).

28. Specify that the limitations on attorneys fees in section 3404 of title 38 shall apply only to cases involving claims for benefits under laws administered by the VA and shall not apply in cases in which the VA is a plaintiff or in which other attorneys' fee statutes apply (section 516).

TITLE VI—HEALTH CARE

This title contains provisions to make various improvements in VA health-care programs and in the administration of such programs.

Part A—Programs Relating to Post-Traumatic Stress Disorder and Mental Health

Part A of this title includes freestanding provisions and amendments to chapters 17 and 73 of title 38 that would:

1. Require the VA to furnish inpatient and outpatient mental health services to Vietnam veterans (those who served either in the Republic of Vietnam or elsewhere in the Vietnam theater of operations during the Vietnam era) who a mental health professional designated by the Chief Medical Director has diagnosed, on the basis of a personal examination, as suffering from service-related post-traumatic stress disorder (section 601).
2. Mandate the VA's Special Committee on Post-Traumatic Stress Disorder to submit to the Administrator (who would submit them to the two Veterans' Affairs Committees) three reports—the first, due April 1, 1989, giving the Special Committee's evaluation of the results of the study mandated by Public Law 98-160 on the prevalence and incidence of PTSD among Vietnam veterans, and the second and third, due February 1 of 1990 and 1991, respectively, updating prior reviews of the VA's efforts to meet the needs of veterans with PTSD (section 602).
3. Require the VA to carry out a scientifically-valid study of the post-war psychological problems among Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific-Islander (including American-Samoan Native), and Alaska-Native Vietnam veterans (section 603).
4. Authorize the appropriation of $3.125 million for FY 1989 and $6.25 million for each of the following 3 fiscal years to establish and operate five Mental Illness Research, Education, and Clinical Centers (MIRECCs) at VA facilities meeting certain prescribed criteria, and require at least one MIRECC to be designated by July 1, 1989 (section 604).
5. Extend entitlement to readjustment counseling to veterans who have served in hostilities after May 7, 1975 (the end of the Vietnam era), and eligibility for such services to World War II and Korean conflict veterans, with particular emphasis in the furnishing of counseling on the needs of those who served in combat (section 605).

6. Make permanent the VA's authority to provide drug and alcohol care, treatment, and rehabilitation services through contracts with halfway houses and other community-based treatment facilities and require the VA to conduct a longitudinal study of veterans who received treatment under this program (section 606).

Part B—Other Health-Care Programs

Part B of this title includes freestanding provisions and amendments to chapters 17 and 81 of title 38 that would:

1. Extend for one year, through fiscal year 1990, the VA's authority to furnish respite care to certain chronically ill veterans and also for one year, through fiscal year 1990, the due date for a VA report on an evaluation of furnishing such care (section 611).

2. Extend, for one fiscal year, through fiscal year 1990 (1) the authorization of annual appropriations of $500,000 for grants to the Veterans Memorial Medical Center (VMMC) in Manila to assist in equipment purchases for and the rehabilitation of VMMC facilities, and (2) the VA's authority to contract with the VMMC for the care and treatment of certain U.S. veterans in the Philippines (section 612).

3. Require the Administrator, in consultation with the Secretary of State, to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives (a) not later than February 1, 1989, and 1990, reports containing information describing the use of grant funds provided during the preceding fiscal year, and (b) not later than May 1, 1989, a report containing (1) information on the care furnished U.S. veterans in the Philippines in fiscal years 1986, 1987, and 1988; (2) an analysis comparing (A) the cost-effectiveness of furnishing care through the VMMC or other facilities in the Philippines, and (B) the quality of care available at the VMMC and such other facilities; (3) a projection of the needs of U.S. veterans in the Philippines during fiscal years 1990 through 1993; (4) a projection of necessary VMMC equipment and physical plant upgrades; and (5) a statement of the policy of the U.S. as to the extent of its continuing obligation for the care of the service-connected and non-service-connected care of U.S. veterans in the Philippines and of our foreign policy interest in connection therewith (section 612).

4. Revise the VA's authority to enter into agreements for sharing scarce medical resources so as to (a) delete the requirement that reimbursement rates cover full costs and substitute the statutory standard for VA-Department of Defense sharing agreements (a "methodology that provides appropriate flexibility" after costs are taken into account), (b) provide that payments for the use of VA resources be allotted to the VA facility involved, and (c) expand the categories of facilities with which the VA may enter into sharing agreements to include all health-care facilities (section 613).

5. Extend for three years, through fiscal year 1992, the authorization of appropriations for State Veterans' Home construction grants (section 614).

6. Require the VA to conduct a 4-year pilot program under which the agency would provide specially trained monkeys to no more than 20 veterans who have service-connected disabilities rated 50

percent or more disabling and are quadriplegic, allow the VA to provide up to 10 specially trained service dogs to such quadriplegic veterans who would benefit from the assistance provided by such a dog, and facilitate the provision of monkeys to no more than 20 other veterans who are quadriplegic; and require the Administrator to conduct an evaluation of this program (section 615).

7. Require the VA to conduct a pilot program for the provision of dogs specially trained to provide hearing assistance to individuals who are deaf to no more than 20 veterans with service-connected hearing impairments who are in need of the assistance of such dogs (section 615).

Part C—Health-Care Personnel

Part C of this title includes freestanding provisions and amendments to chapters 73, 76, and 82 of title 38 would:

1. Authorize the VA to hire, without regard to the Civil Service register process, newly-graduated, VA-trained health-care professionals other than physicians or dentists (section 621).
2. Reduce from 90 to 45 days the period, after VA submission of a title 5 health-care employees' special-pay rate request, in which the President may disapprove the proposed rate, and clarify that the VA may take action based on approval given in a shorter period (section 622).
3. Provide for the VA Health Professional Scholarship program to be extended to persons enrolled in the second year of an Associate degree nursing program (section 623).
4. Authorize the appropriation of $5 million for each of fiscal years 1989 and 1990 and $6 million for each of fiscal years 1991 and 1992 for the VA to reinstitute (with modifications) a program of grants to provide assistance in the education of health-care personnel, other than physicians and dentists, by VA-affiliated schools and to assist in developing and evaluating new health careers, interdisciplinary approaches, and career-advancement opportunities in collaboration with representatives of the professions, the members of which are currently responsible for carrying out the duties involved, and authorize the VA to use up to 10 percent of each year's appropriation on VA programs to develop or initiate improved methods of education and training for health-care personnel (section 624).
5. Require the VA during calendar years 1989, 1990, and 1991 to conduct, and submit periodic reports on, a pilot program at not less than five VA health-care facilities to determine the desirability of implementing various pay and management practices relating to the recruitment and retention of registered nurses and other scarce health-care professionals; and provide the VA with the authorities to implement, as part of the pilot programs, flexible employee benefits and action to minimize pay compressions (section 625).
6. Provide for the conversion of non-physician VA hospital directors from appointment under title 38 to appointment under the Senior Executive Service authority in title 5 (but allow such a director who wishes to remain under title 38 during his or her tenure as director to do so (section 626).

7. Provide that the procedures in title 5 for the resolution of specified lesser disciplinary actions (admonishments, reprimands, suspensions of 14 days or less, and transfers not involving loss of grade) would be used in cases involving title 38 VA health-care personnel (including the use of a negotiated grievance procedure involving an appeal to an arbitrator for those employees who are members of recognized bargaining units) and create, in title 38, a grievance-resolution process that parallels that available to title 5 employees (section 627).

TITLE VII—MISCELLANEOUS

Title VII contains amendments to title 38 and the Internal Revenue Code of 1986, and free-standing provisions which would:

1. Expand the period defined in title 38 purposes as the Vietnam era in the case of veterans who served in the Republic of Vietnam to include the period beginning February 28, 1961, and ending August 4, 1964 (the day before the starting date in current law) (section 701).
2. Extend for 4 years, through FY 1992, the VA's authority to maintain a Regional Office in the Republic of the Philippines (section 702).
3. Require disclosure to the VA of (a) certain information maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA) relating to income for purposes of verifying eligibility for VA needs-based pension or parents' dependency and indemnity compensation or for VA health-care services based on income status, and (b) IRS and SSA information relating only to wage and self-employment income for purposes of determining eligibility for compensation paid at the total-disability rate based on an individual determination of unemployability (section 703).
4. Allow the VA, in the case of compensation beneficiaries with total-disability ratings based on individual unemployability, to verify or otherwise act upon wage or self-employment data only if the Administrator finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability (section 703).
5. Prohibit the Administrator from using such IRS or SSA information without first complying with Social Security Act requirements relating to independent verification of the data, notification to the individual concerned, and allowing the individual fair opportunity to contest agency findings based on such information (section 703).
6. Require the VA, within 90 days after the date of enactment and before obtaining any such IRS or SSA information, to notify certain recipients of and applicants for VA benefits and services that income reported to the VA will be subject to verification against such information and subsequently to so notify new applicants and renotify all recipients (section 703).
7. Provide that the VA's costs for the program under which IRS and SSA information would be obtained, used, and verified would be paid from the VA's compensation and pension account and that amounts collected as a result of the program would be paid into that account (section 703).

8. (a) Postpone for 4 years, until December 1, 1992, the requirement of annual December 1 reports from VA Medical Centers to the Administrator providing lists indicating the quantity of each health-care item procured at each VA center under a local contract and the total amount paid for such item; (b) postpone until May 20, 1989, certain restrictions on procuring health-care items under local contracts; and (c) amend the definition of the term "health-care item" so as not to include kitchen equipment and utensils (section 704).

9. Make certain technical corrections necessitated by the enactment of Public Law 100-322 (section 705).

Discussion

TITLE I—COMPENSATION AND RELATED BENEFITS

Disability Compensation and Dependency and Indemnity Compensation Cost-of-Living Adjustments

Section 101 of the Committee bill, which is derived from section 2 of S. 2011 as introduced, would require the Administrator to adjust upwardly, effective December 1, 1988, the rates and limitations for compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) paid to certain service-connected disabled veterans' survivors. The adjustment would be the same percentage—which the Congressional Budget Office (CBO) estimates at this time to be 4.5 percent—as that which will be provided to Social Security recipients and VA pension beneficiaries effective the same date. Increased rates computed under this provision would be rounded down to the nearest dollar. These increased benefits would actually be paid beginning on January 1, 1989.

Background

The service-connected disability compensation program provides monthly cash benefits to veterans who have disabilities that were incurred in or aggravated during active service in our Nation's Armed Forces.

The amount paid in individual instances depends upon the nature of the veteran's disability or combination of disabilities and the extent to which earning capacity is considered to have been impaired. Compensable disabilities are rated according to the VA's Schedule for Rating Disabilities on a graduated schedule ranging from 10 to 100 percent. Higher monthly rates are payable to totally disabled veterans with certain specific, very severe disabilities and combinations of disabilities.

As of May 1988, the disability compensation program was providing benefits for 2,202,239 veterans who have service-connected disabilities. This number includes disabled veterans with the following periods of service: 6,576 World War I veterans; 958,094 World War II veterans; 215,776 Korean-conflict veterans; and 629,778 Vietnam-era veterans. A veteran whose disability is rated at 30 percent or more may receive additional compensation for the veteran's spouse, children, and dependent parents. These dependents' allowances are pro-rated according to the percentage of disability. As of May 1988, 671,885 veterans were receiving additional compensation for 1,044,731 dependents.

DIC is paid to the survivors—surviving spouses, unmarried children under the age of 18, as well as certain helpless children age 18 or over, children between the ages of 18 and 23 who are enrolled in school, and certain needy parents—of servicemen or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during active service.

Surviving spouses, children, and parents who are receiving death compensation by reason of a veteran's death occurring before January 1, 1957, may elect instead to receive DIC. However, they cannot, thereafter, receive death compensation.

DIC is paid to surviving spouses at rates determined by the pay grade—service rank—of the deceased veteran. A higher rate is payable if the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance, and additional amounts are payable for the veteran's surviving children. Children become entitled to DIC where there is no surviving spouse, or where a child age 18 or over became permanently incapable of self-support before reaching age 18, or where a child is age 18–23 and pursuing an approved course of education. As of May 1988, DIC benefits were being paid to or for 267,380 surviving spouses, 45,051 children and 34,619 needy surviving parents. Under section 3112 of title 38, United States Code, the parents' DIC rates are automatically adjusted at the same time and by the same percentage as are Social Security and VA pension benefits.

Under 410(b) of title 38, benefits are also paid at DIC rates to the surviving spouse and children of veterans whose deaths are not determined to be service-connected, where the veteran received compensation at the 100-percent rate over an extended period of time immediately prior to his or her death.

History of cost-of-living increases

The Committee periodically reviews the service-connected disability compensation and DIC programs with a view toward ensuring that the benefits provided for provide reasonable and adequate compensation for disabled veterans and their families. Congress has acted periodically to provide cost-of-living adjustments (COLAs) in compensation and DIC benefits in order to ensure that those benefits keep pace with inflation. In fact, Congress has provided for annual increase in these rates every fiscal year since 1976. The following table shows the percentage increases since 1970.

TABLE 1.—HISTORY OF SERVICE-CONNECTED DISABILITY COMPENSATION INCREASES, 1970 TO PRESENT

	Month	Increase (percent)	Cumulative (1969=100)
Year:			
1970	July	10	$110.00
1972	August	10	121.00
1974	May	17.2	141.00
1975	August	11.8	158.55
1976	October	8.0	171.23
1977	October	6.6	182.53

TABLE 1.—HISTORY OF SERVICE-CONNECTED DISABILITY COMPENSATION INCREASES, 1970 TO PRESENT—Continued

	Month	Increase (percent)	Cumulative (1969=100)
1978	October	7.3	195.86
1979	October	9.9	215.25
1980	October	14.3	246.03
1981	October	11.2	273.58
1982	October	7.4	293.82
1983	April	3.5	304.11
1984	December	3.2	313.84
1985	December	3.1	323.57
1986	December	1.5	328.42
1987	December	4.2	342.21

In fiscal year 1988, expenditures for the compensation and DIC programs combined totalled approximately $10.8 billion.

Committee bill

The Committee bill would direct the VA to compute and provide for increases in the monthly rates of compensation and DIC, effective December 1, 1988. These increases would be the same percentage increase as the percentage of the Social Security/VA pension benefits cost-of-living adjustment (COLA) that will take effect on that date, with uneven amounts rounded down to the nearest dollar.

The rate adjustment provided by the Committee bill would apply to the monthly rates of disability compensation under section 314 of title 38, United States Code (except for the monthly rate specified in subsection (k) of section 314); the rates of additional monthly compensation for dependents payable under section 315 to veterans rated 30-percent or more disabled; and the annual clothing allowance under section 362 for disabled veterans who must use prosthetic or other orthopedic appliances, such as wheelchairs, that tend to tear or wear out their clothing and, as proposed in section 102 of the Committee Bill veterans who use medication prescribed for service-connected skin conditions that stains or otherwise damages their clothing. The limitations in subsections (k) and (p) of section 314 on the maximum monthly amount payable to a veteran who would otherwise be entitled to a higher amount by reason of entitlement to two or more rates would also be increased.

The COLA would also apply to the basic DIC rates for surviving spouses and children and to the additional allowances paid to surviving spouses who are in need of aid and attendance or are housebound, helpless children age 18 or over, and children between the ages of 18 and 23 attending school.

As noted earlier, the increases in DIC would automatically result in identical percentage increases in the benefits paid at DIC rates, under section 410(b) of title 38, to the surviving spouses and children of certain totally-disabled service-connected veterans who, at the time of death, were continually rated totally disabled for at least 10 years or were so rated for at least 5 years from the date of discharge. Also, by virtue of section 156(e)(1)(A) of Public Law 97-377 (a fiscal year 1983 continuing appropriations measure enacted on December 21, 1982), the DIC increases would automatically result in an increase, also effective December 1, 1988, in benefits paid in lieu of Social Security survivors' benefits terminated by section 2205 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) to certain survivors of those who died on active duty or from service-connected disability—namely, to surviving spouses for children ages 16 and 17 and for secondary-school students over age 19. Additionally, pursuant to the amendment to section 156(a)(1) of Public Law 97-377 made by section 314 of Public Law 100-322, which restored to DIC beneficiaries receiving certain Social Security-equivalent benefits, the benefits which were eliminated by the Omnibus Budget Reconciliation Act of 1981, the DIC increase would be applied, effective December 1, 1988, to these restored benefits.

In written testimony for the June 9, 1988, hearing, the VA testified: "The Administration strongly supports COLA's based upon actual cost-of-living increases, and we believe that goal would best be effectuated by legislation providing for an automatic annual increase in compensation rates indexed to increases in the CPI." All other witnesses at the June 9 hearing opposed such permanent indexing and the Committee likewise disagrees with permanently linking compensation and DIC COLAs to annual Social Security increases.

The Congressional budget for fiscal year 1989 (H. Con. Res. 93) as adopted on June 24, 1987, is based on the Office of Management and Budget's assumption that the COLA would be 4.2 percent. The Congressional Budget Office (CBO) was, as of the date of the Committee's June 29 meeting on this legislation, officially estimating that the increase would be 4.5 percent. Rather than selecting any particular percentage adjustment at the time it ordered the bill reported, the Committee adopted this year, as it has in prior years, the statutory tie-in to the Social Security increase as the most equitable means of providing for this increase in these very important service-connected benefits.

Expansion of Clothing Allowance

Section 102 of the Committee bill, which is derived from section 201 of S. 2267, an Administration proposal, would expand the clothing allowance authorized under section 362 of title 38—currently payable to a veteran who, because of service-connected disability, uses a prosthetic or orthopedic appliance (including a wheelchair) which tends to wear out or tear the veteran's clothing—so as to include cases in which the Administrator determines that the veteran uses medication prescribed for a service-connected skin condition that stains or otherwise damages the veteran's clothing.

At the Committee's June 9 hearing, section 201 of S. 2267 received general support, including that of the VA, and no opposition.

TITLE II—AGENT ORANGE AND RELATED PROVISIONS

Interim Period for Award of Benefits for Vietnam Veterans with Non-Hodgkin's Lymphoma

Section 202 of the Committee bill contains freestanding provisions, which were proposed by Senators Cranston and Murkowski and derived in part from S. 1692, that would provide for the payment of disability or death benefits, effective January 15, 1989, equal to VA service-connected disability compensation in the case of Vietnam veterans who have non-Hodgkin's lymphoma (NHL), or DIC in the case of the survivors of such veterans, who apply for benefits during the period beginning on October 1, 1988, and ending not more than six months after the results of the Centers for Disease Control's (CDC) Selected Cancers Study (SCS) are submitted to the VA. Those results are expected to be submitted in early 1990. The results are expected to be so submitted in early 1990. The Administrator would be authorized to stop making awards of such benefits with respect to new applications if, after receiving the reports on the SCS by the Office of Technology Assessment (OTA) and Veterans' Advisory Committee on Environmental Hazards (EHAC), the Administrator finds that the SCS results together with any other scientific evidence then available do not support an association between NHL and service in Vietnam.

Background

Herbicide Use in Vietnam.—Agent Orange was the military name for an herbicide used during the Vietnam War from 1962 to 1971. It was the most widely-used herbicide in Vietnam and consisted of a 50:50 mixture by weight of the n-butyl esters of two phenoxy acid herbicides, 2,4-dichlorophenoxyacetic acid (2,4-D), and 2,4,5-trichlorophenoxyacetic acid (2,4,5-T). A compound commonly referred to as "dioxin"—2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD) was a synthetic contaminant of 2,4,5-T. Levels of dioxin contamination of Agent Orange ranged from 0.02 to 47 parts per million, with a mean of about 2 parts per million.

The United States used herbicides in Vietnam primarily for defoliation, crop destruction, and, on a smaller scale, clearing vegetation around U.S. fire bases and other installations, around landing zones, and along lines of communication. The United States began using herbicides in Vietnam in 1962, substantially expanding their use from 1967 to 1969. In 1969, after a report by the National Institutes of Health that one of the components of Agent Orange—2,4,5-T—could cause birth defects in mice, the Government restricted the use of Agent Orange in Vietnam to areas remote from population. During 1970 and 1971, the use of herbicides was phased out in Vietnam.

The vast majority of herbicides used in Vietnam were disseminated by aerial spraying through a military project, code-named "Operation Ranch Hand", which utilized fixed-wing aircraft. The herbicides were sprayed at a rate of three gallons per acre. Much smaller amounts of the herbicides also were applied from helicopters, trucks, riverboats, and backpacks. Approximately 20 million gallons of herbicides were dispersed in Vietnam, including approximately 11 million gallons of Agent Orange. The greatest amount of Agent Orange spraying—approximately 5.3 million gallons—occurred in the III Corps area, the region of the country centering around Saigon. Since the defoliation caused by a single spray or series of sprays lasted many months, spraying was not constant.

Characteristics of Dioxin.—Dioxin is not water soluble and thus is not readily absorbed by the body from drinking water containing it. Dioxin tends to remain stable for a long time in the environment, with virtually no leaching or biosynthesis in soils and virtually no uptake of it by plants. However, dioxin is highly susceptible to degradation by exposure to sunlight.

Committee Hearings.—Beginning in the late 1970's, serious questions began to be raised regarding veterans' exposure to Agent Orange in Vietnam. These concerns fall into three general categories: Compensation for disabilities possibly related to exposure; answers to questions about the actual effects of exposure to Agent Orange; and access to health care for current problems that might be related to the exposure. The Committee has held eight oversight hearings regarding these concerns, resulting in legislation—which was later enacted into law—designed to address them, as well as providing active oversight of the efforts of the VA and other Government agencies relating to the concerns of these veterans and their dependents and survivors.

The initial hearing was held on January 25, 1979, when the Committee began a series of five hearings on the readjustment of Vietnam-era veterans. Three of those hearings included significant emphasis on Agent Orange. The first two were field hearings held on January 25 in Chicago and on January 26 in Los Angeles, and a substantial portion of the testimony was from Vietnam veterans and their families. The third hearing, held on February 21, included testimony from Government agencies involved in both the conduct as well as the monitoring of activities pertaining to Agent Orange.

On September 10, 1980, the Committee held a hearing for purposes of receiving an update on the status of Agent Orange-related activities then being conducted by various Federal agencies, particularly activities bearing on the state of scientific knowledge about the long-term health effects in humans of exposure to dioxin as contained in Agent Orange. Representatives from veterans' organizations also presented testimony.

The Committee on November 18, 1981, held another oversight hearing on issues related to Agent Orange, stressing the Federal Government's efforts to determine the adverse health effects which may result from exposure to Agent Orange and other herbicides. The Committee particularly focused on the status of the protocol for the Agent Orange epidemiological study mandated by Public Law 96-151. Scientists and other representatives from various Government agencies, as well as others involved in the peer review of that protocol and representatives of veterans' organizations, testified at that hearing.

The Committee also held two hearings, on June 15 and 22, 1983, on the current state of scientific knowledge regarding the long-term health effects of exposure to Agent Orange, the status of ongoing Agent Orange-related studies, the availability of VA assistance for Agent Orange-exposed Vietnam veterans, and the appropriateness of the process by which the VA handles claims for compensation based on Agent Orange (and radiation) exposure. The Committee heard testimony from the same categories of witnesses that testified at the November 1981 hearing.

On May 12, 1988, the Committee held a 6½ hour hearing on Agent Orange-related oversight and legislation, receiving testimony on the state of science relating to Agent Orange exposure and the concerns of veterans who may have been so exposed in Vietnam. Scientists from the CDC, the OTA, the EHAC, the Scientific Council of the Domestic Policy Agent Orange Working Group (AOWG), the Air Force, the National Cancer Institute (NCI), the Environmental Protection Agency, the Department of Agriculture, and the University of Rochester testified regarding numerous studies which have been conducted regarding the effects of exposure to Agent Orange, its by-product, dioxin, its component parts, and related phenoxy herbicides. Although many of the studies reassuringly have found no adverse human health effects, others have presented more troubling suggestions that Agent Orange may be associated with an increased risk of certain diseases in humans. The scientists generally concluded that, while serious concerns have been raised regarding a possible link between Agent Orange exposure and NHL, at this time the scientific evidence does not establish an association between Agent Orange exposure and any disease other than chloracne in humans. Representatives of veterans, Vietnam veterans, and Agent Orange organizations testified as to their concerns regarding Agent Orange exposure.

Research Pertaining to the Human Effects of Agent Orange Exposure in Vietnam.—A major focus of the Committee's efforts has been on research which might eventually lead to a greater understanding of the health effects of Agent Orange exposure and how best to address the special needs of those veterans who may have been exposed to this herbicide.

CDC Epidemiological Studies.—In 1979, in response to concerns expressed regarding possible delayed adverse health effects as a result of exposure to Agent Orange, Congress enacted legislation—in section 307 of Public Law 96-151—which mandated that the VA conduct an epidemiological study of the possible health effects in Vietnam veterans of exposure to dioxin as found in herbicides used in Vietnam. The scope of that study was expanded—by section 401 of Public Law 97-72—to authorize the inclusion of an evaluation of the impact on the health of Vietnam veterans or other environmental factors which may have occurred in Vietnam—that is, a "Vietnam experience" study. In 1983, the VA delegated to the CDC the responsibility for this study.

The CDC conducted the epidemiological study of the health of Vietnam veterans in three components. As mandated by Public Law 96-151, the CDC's protocols for these studies were extensively reviewed in accordance with scientific peer-review criteria and were approved by the OTA. In addition, these protocols were approved by the AOWG.

1. *Vietnam Experience Study (VES).*—The VES was designed to demonstrate whether or not there is any difference in the health of veterans of the Vietnam era who served in Vietnam compared to

the health of veterans who served elsewhere during the same period of time. The VES was comprised of a mortality study and a morbidity study.

a. *Mortality Study.*—In January 1987, the CDC released the results of its analysis of postservice mortality of over 18,000 Vietnam-era veterans. The CDC found an excess of deaths—primarily due to external causes such as motor vehicle accidents and suicides—among Vietman veterans in the first 5 years after service. However, after that period, except for drug-related deaths, the study found no increase in the death rate for Vietnam veterans as compared to their veteran counterparts who did not serve in Vietnam. This finding was similar to that found among veterans returning from combat areas after World War II and the Korean Conflict.

b. *Morbidity Study.*—The morbidity study consisted of detailed telephone interviews of 15,288 Vietnam veterans and Vietnam-era veterans who did not serve in Vietnam and comprehensive medical and psychological examinations of a random subsample of 4,462 such veterans. The two groups of veterans were similar in demographic terms including level of education, employment, income, marital status, and satisfaction with personal relationships. Based on interim analyses of the VES data and on other related studies, the CDC added a birth outcome validation component and a semen analysis component to the morbidity study. The results from the morbidity study were released at the Committee's May 12, 1988, hearing on Agent Orange issues and published in three articles in The Journal of the American Medical Association on May 13.

The CDC found that, despite a substantial increase in health problems reported by Vietnam veterans in telephone interviews, analysis of the hundreds of physical health items evaluated as part of the medical examinations revealed that there were few objective differences between the physical health of the two groups of veterans. In the telephone interviews, Vietnam veterans reported an increased prevalence of a number of medical problems including hypertension, chloracne and other skin conditions, liver conditions, and urinary problems, as well as overall "fair or poor health". However, these increases were not substantiated by the physical examinations, which indicated that the Vietnam veterans generally are as healthy as the non-Vietnam veterans.

The CDC found that the "most noteworthy differences [which were verified upon physical examination of the two groups of veterans] were hearing loss, stool occult blood, evidence of past infection with hepatitis B, lower sperm concentrations, and lower average proportions of morphologically 'normal' sperm cells. Despite these last two findings, the average number of children fathered per veteran in each cohort . . . was identical—1.6 children." The CDC also reported that, although Vietnam veterans reported more adverse reproductive and child health outcomes, further examination revealed no significant difference between the two groups of veterans in the number of or the incidence of birth defects among their children.

The VES did not find an increase generally in cancer among the Vietnam veterans, but the study was not designed to detect increases in specific kinds of cancer. However, in its testimony for the Committee's May 12 hearing and in June 23, 1988, letters to the Chairman and Ranking Minority Member, the CDC reviewed the VES data with respect to the incidence of NHL. The CDC found seven cases (as compared to 3.9 expected cases) of NHL among Vietnam veterans and one case (as compared to 3.5 expected cases) among non-Vietnam veterans. The CDC stressed, however, that those numbers are too small to be meaningful in the study's population of 15,300 and could be the result of chance alone. The OTA has expressed a similar view regarding the significance of these data.

2. *Agent Orange Study.*—The CDC's Agent Orange Study was designed to determine if there are any differences in the health of veterans who were exposed to that herbicide during service in Vietnam compared to the health of veterans who also served in Vietnam but who were not so exposed. The implementation of this study depended on the development of a scientifically-valid Agent Orange exposure index based on information contained in military records to be used to assign the veteran to a particular study cohort. In late 1986, the CDC refined a methodology for detecting residuals of dioxin in blood samples which, by establishing current body burdens of dioxin, could indicate past exposure to dioxin and thus, it was believed, could be used to validate a very intricate exposure-measurement methodology developed by the Defense Department in consultation with the CDC, based on military records. The blood-testing method of determining dioxin exposure has also been validated and used successfully in other studies, including studies of civilians and Ranch Hand Air Force personnel with known substantial exposure to dioxin.

The CDC conducted a study to validate dioxin exposure predicted by both military records and self-reported exposure estimates. The results of the CDC's Validation Study, published in the July 24, 1987, issue of the CDC's Morbidity and Mortality Weekly Report showed no association between serum dioxin levels and the exposure estimates. The CDC found no significant dioxin exposure among the Vietnam veterans studied regardless of whether their military records or self-reported estimates indicated high, low, or intermediate exposure. Moreover, all except two of the Vietnam veteran participants had dioxin levels within normal background levels—that is, the upper limit for United States residents without known dioxin exposure.

The OTA and the AOWG reviewed the CDC blood dioxin study and both concluded that it was properly conducted and scientifically valid. They determined that the Agent Orange Study, at least as originally envisioned, could not be carried out. The OTA concluded that "[t]here is no support for the rationale for a large-scale epidemiologic study" and "[t]here cannot be a general study of Agent Orange effects on ground troops." Similarly, Don M. Newman, Chair of the AOWG, in a November 3, 1987, letter to Chairman Cranston, stated that the "Agent Orange Exposure Study . . . has proved scientifically impossible to do." Those determinations by the OTA and CDC were reconfirmed at the Committee's May 12 hearing.

3. *Selected Cancers Study (SCS).*—The SCS is a case-control study designed to determine whether there is an increase among Vietnam veterans in the incidence of several serious, but relatively

rare, cancers—lymphoma (including NHL and Hodgkin's lymphoma), soft tissue sarcoma, and nasal, nasopharyngeal, and primary liver cancers—which have, in some studies, been suggested to be linked to dioxin exposure. The CDC is in the process of data collection at this time, and the results of the SCS are expected to be published in early 1990.

Ranch Hand Study (RHS).—In 1979, the Air Force began an epidemiological study of Ranch Hand personnel, the Air Force personnel who participated in the Agent Orange spraying missions in Vietnam, to determine whether these individuals suffered adverse health effects from herbicide exposure. In the RHS, the health of these personnel is being compared with that of counterparts who served in the Air Force in Southeast Asia and were not exposed to herbicides. Four mortality reports have been released thus far—the most recent in January 1987. None have indicated excess morbidity among the Ranch Hand personnel as a group, although the Air Force cautions that it is too early to draw any conclusions from these preliminary results. In October 1987, a report summarizing the results from the first follow-up examinations of the RHS was released. The RHS report concluded "that there is not significant plausible or consistent scientific evidence at this time to implicate a causal relationship between herbicide exposure and adverse health in the Ranch Hand group."

To date, according to the Air Force, none of these reports demonstrate any adverse health effects which can be conclusively attributed to dioxin exposure.

In February 1988, a report, entitled "United States Air Force Personnel and Exposure to Herbicide Orange", identified as an Interim Report for the period March 1984—February 1988 by Dr. Richard A. Albanese of the U.S. Air Force School of Aerospace Medicine, was released by the Air Force. Dr. Albanese compared "salient" findings of the first RHS morbidity report published in 1984 with a dioxin toxicological profile which he developed from a review of scientific literature relating to the effects of dioxin exposure. Dr. Albanese had two principal differences with the 1984 Air Force report. First, in the area of birth defects, he concluded that minor birth defects cannot be assumed to account for an excess of reported birth defects—which the Air Force is in the process of verifying—as the earlier report had suggested. The Air Force generally agreed with this conclusion at the May 12 hearing and said that its next Ranch Hand report will contain an update in this area. Second, Dr. Albanese stated that a possible increase in cancers should not be assumed to be limited to skin cancers, as the 1984 report suggested. The Air Force disagreed with this conclusion. Dr. Albanese's report concluded that dioxin "cannot be confidently identified as the causative agent of these findings at this time" but that it also "is not exonerated as a causative agent".

At the request of the Senate and House Veterans' Affairs Committees, the OTA, the AOWG, and the EHAC reviewed Dr. Albanese's report. The OTA concluded that the "report by Dr. Albanese does not call into question any of the findings reported directly by the Air Force study team in their original reports. . . . Other than continuing to study this group [*i.e.,* the Ranch Handers], as is planned, and to use new technology to determine dioxin body burdens, the reinterpretation does not suggest interventions of any kind or new directions for [the RHS]."

The AOWG analysis of the report concluded that "[t]his paper appears to be intended as an expansion of the discussion section of the 1984 Ranch Hand "baseline" morbidity report. . . . In summary, the five 'significant' morbidity measures mentioned by [Dr.] Albanese as being in excess among the Ranch Hand group are either undergoing validation (parent-reported birth defects) or are not supported by subsequent work."

The EHAC concluded that "the report is flawed in a number of ways." Most significantly, the EHAC found that the report's failure to refer to more recent 1988 morbidity data was a serious shortcoming "because many of the trends observed in the 1984 data did not continue in the 1988 data. Therefore, many of the inferences derived from the 1984 data were incorrect when viewed in light of the 1988 data."

VA Proportional Mortality Study.—The VA recently completed a Proportionate Mortality Study of Army and Marine Corps Vietnam veterans which examined the effect of service in Vietnam (not Agent Orange exposure). The results of this study, which were released in September 1987, have been published in the May 1988 Journal of Occupational Medicine. The Va compared causes of death among 24,235 Vietnam veterans with causes of death among 25,685 non-Vietnam veterans. The study found a statistically-significant two-fold increase of NHL and a statistically-significant 57 percent increase of lung cancer among the Marine Corps Vietnam veterans, who comprised approximately 20 percent of the Vietnam veterans in the study. However, there was a small, not statistically-significant deficit of NHL deaths and no increase in lung cancer deaths among the Army veterans, who comprised about 80 percent of the Vietnam veterans studied and no increase in either cause of death among all of the Vietnam veterans studied. As to all cancers and as to deaths in general, there was no marked difference between causes of death among the Vietnam veterans as compared to the non-Vietnam veterans.

The OTA, the AOWG, and the EHAC, in response to a request from the Committee, evaluated this study, with particular reference to whether it supports the suggestion in several studies of a link between NHL and dioxin exposure. Although all three groups concluded that the methodology of the study was sound, each expressed reservations about interpretation of the findings of excess NHL and lung cancer deaths. The OTA stated that the finding of excess NHL deaths among the Marines had to be interpreted with caution because of the small number of cases involved (35 of 4,527 Marine Vietnam veterans). With respect to the excess lung cancer deaths found among the Marines, the OTA noted that "cigarette smoking is the most obvious potential case of the excess" and stated that it is "essential that smoking histories be obtained for these cases. . . ."

The AOWG, in its analysis of the Proportionate Mortality Study, stated that it "is not surprising to encounter the small number of statistical departures from expected mortality seen in this study. Some of these could have arisen by chance alone." The AOWG also emphasized the need for further information regarding smoking histories among the Marines in order to interpret the excess lung cancer findings.

The EHAC concluded that "the findings concerning the non-Hodgkin's lymphoma and lung cancer, while stratistically significant, should be interpreted with caution and are not conclusive. . . ."

The Committee believes that the VA itself needs to examine additional questions arising out of the study, including, for example, the health status of Army Vietnam veterans who served in the I Corps area, the area in Vietnam where the majority of the Marine veterans served. The Committee has requested an evaluation from the VA regarding further investigation of conditions in I Corps, the region below the Demilitarized Zone. The Committee understands that approximately 2.3 million gallons of Agent Orange were sprayed in I Corps area as compared to 5.3 million gallons in the III Corps area but that factors such as troop dispersion, location, and spray patterns must also be carefully considered in any subsequent analysis. At the Committee's May 12 hearing, the VA described several follow-up studies to the Proportionate Mortality Study which it has completed or currently is conducting. These studies include a review of the smoking histories to the extent indicated in the military medical records of the Marines who died from lung cancer, which the VA described in its testimony for the Committee's May 12 hearing as having been "not helpful."

Non-Veteran Herbicide Studies.—In addition to studies of the effects of dioxin exposure on Vietnam veterans, other independent studies have examined the effects of herbicide exposure on agricultural, forestry, and industrial workers. Some of these studies have found some excesses of NHL among occupationally-exposed workers. Studies conducted in Sweden by Dr. Lennart Hardell and others on the effect of years of occupational exposure to phenoxy herbicides, including in some cases compounds containing dioxin, have been inconsistent with respect to finding an association between such exposure and NHL. Although certain of these studies have found significant increases in NHL, others have not found an increase. Some have found no link at all between NHL and herbicide exposure.

1. *Kansas Study.*—In September 1986, the results of a study entitled "Agricultural Herbicide Use and Risk of Lymphoma and Soft-Tissue Sarcoma" (Kansas Study), conducted by the NCI and the University of Kansas, were published. (S.K. Hoar et al., "Agricultural Herbicide Use and Risk of Lymphoma and Soft-Tissue Sarcoma,"[256] The Journal of the American Medical Association 1141 (1986).) This study examined the effect of exposure to certain herbicides through years of direct contact from agricultural use, including any relationship with NHL. The components of some of the herbicides were also present in Agent Orange, but the herbicides were almost exclusively not contaminated with TCDD. The Kansas Study found a significant increase of NHL.

The OTA and the AOWG reviewed this study and found it to be well-conducted and scientifically valid but both raised questions about the significance of the study results as far as Vietnam veterans were concerned. Both reviews noted that almost all of the herbicide exposure evaluated in the study consisted of exposure to 2,4-

D, a phenoxy acid herbicide of which TCDD is not a contaminant, rather than to herbicides containing TCDD. Although 2,4-D is one of the components of Agent Orange, it does not persist in the environment. Thus, according to the OTA, substantial exposure in Vietnam would have required either direct contact with Agent Orange or exposure very shortly after spraying. Accordingly, as the OTA observed, few Vietnam veterans would have been exposed to 2,4-D, and the results of the Kansas Study do "not provide strong support for attributing the occurrence of non-Hodgkin's lymphomas in Vietnam veterans to Agent Orange". Concerns also were expressed regarding the small number of cases on which the NHL findings were based.

The Chairman of the EHAC, Oliver Meadows, in a February 11, 1987, letter expressed similar concerns. The letter concluded that the "study's findings, while not directly applicable due to the differences in method and duration of exposure, did have implications for Vietnam veterans. The members of the EHAC did not believe that one study provided a sufficient foundation upon which to base firm conclusions."

2. *Western Washington Study.*—A study entitled "Soft Tissue Sarcoma and Non-Hodgkin's Lymphoma in Relation to Phenoxy Herbicide and Chlorinated Phenol Exposure in Western Washington" which was published in the May 1987 issue of the Journal of the National Cancer Institute, investigated the relationship between the incidence of soft tissue sarcomas and NHL and past exposure to phenoxy herbicide and chlorinated phenol using a population-based case-control approach. This study found "small but significantly increased risks for developing NHL in association with some occupational activities involving exposure to phenoxy herbicides, particularly for prolonged periods, and possibly, in combination with other chemicals." The author of the study concluded, however, that overall the study did not demonstrate "a positive association between increased cancer risks and exposure to any specific phenoxy herbicide product alone."

The Senate and House Veterans' Affairs Committees asked the OTA, the AOWG, and the EHAC to review this study and provide their views on its relevance to issues relating to Vietnam veterans. The EHAC noted in its Summary Minutes of its April 27-28, 1987, meeting that the study was well-designed and well-executed and that "this study adds to the accumulating evidence of no relationship with herbicide exposure and the occurrence of soft-tissue sarcoma" but that "[t]he association of phenoxy herbicide exposure with NHL warranted careful watching for new evidence".

The AOWG submittted as an enclosure to its January 20, 1988, letter, the AOWG's Science Panel's review of the study, which concluded that "the results of this study do not support an association between [soft tissue sarcoma] and NHL and occupational exposure to phenoxy herbicides or chlorophenols."

In a February 4, 1988, letter, the OTA stated: "This study does not provide support for a hypothesized connection between Agent Orange and subsequent development of [soft tissue sarcoma] and provides very limited support for a connection with NHL."

Health Care.—Section 102 of Public Law 97-72, which was enacted in 1981, provided special eligibility for VA health-care services to veterans who may have been exposed during military service to dioxin or were exposed during such service to a toxic substance found in a herbicide or defoliant used in Vietnam during the Vietnam era and for veterans exposed to ionizing radiation during their participation in the nuclear weapons testing program or the American occupation of Japan. This law provides eligibility for such care for any disability "notwithstanding that there is insufficient medical evidence to conclude that such a disability may be associated with such exposure." Eligibility to receive VA health-care services for those disabilities is provided without the veteran having to establish that he or she is unable to defray the cost of needed care, as section 610 of title 38 then required.

The health-care services for which eligibility was provided included inpatient care in VA facilities for the disability in question and outpatient or ambulatory care in VA facilities for the disability on a pre- or post-hospitalization basis or as necessary to obviate the need for such hospitalization. As amended in April 1986, the provisions involved now require the VA to furnish inpatient hospital care to these veterans.

Providing this health-care eligibility demonstrated the Congress' commitment to provide concrete assistance to these veterans who are suffering health problems that may eventually be found to be related to their service while the efforts to determine if the disabilities are actually or probably so related go forward and to indicate that the information needed finally to resolve questions of service connection is not and may not ever be available in many cases.

The eligibility provided under Public Law 97-72 does not apply with respect to disabilities that are found, according to guidelines required under that law to be issued by the Chief Medical Director, to have resulted from a cause other than the specified exposure.

The Congress was satisfied that, as to some disabilities, such as traumatic injuries and infectious diseases—influenza, for example—valid medical judgments can be made that a particular disability is the result of a specific cause other than the possible exposure. In recognition of the scientific uncertainties regarding the amount of Agent Orange exposure of Vietnam veterans and the potential adverse human health effects of such exposure, however, the legislative language puts the burden on the VA to establish that a disability was not caused by Agent Orange exposure, instead of placing it on the veteran to show that the disability was caused by Agent Orange exposure.

The VA initially listed diseases that were eligible for treatment, rather than those as to which there was no eligibility. In 1983, the agency advised the Committee that it was amending the implementing regulations so as "to allow treatment of all health conditions except for those known to have causes other than Agent Orange exposure", the standard articulated in the underlying law.

As originally enacted, Public Law 97-72 provided health-care eligibility for a limited period ending one year following the VA's first submission providing results from the epidemiological study regarding veterans exposed to Agent Orange that was mandated by Public Law 96-151. These health-care benefits were "sunsetted"—as were the health-care benefits provided for veterans exposed to radiation—in order to provide interim relief pending the results of on-going scientific research pertinent to the service-connection of the disabilities in question.

The Administrator was required to submit the first report on the Public Law 96-151 Agent Orange-exposure epidemiological study of Vietnam veterans not later than 24 months after the study protocol was approved, an event which occurred on February 14, 1984. Thus, the first report on the study was due by February 14 1986, and the health-care eligibility was scheduled to expire on February 14, 1987. When it later became clear that the major studies—the Public Law 96-151 study on Agent Orange and study mandated by Public Law 98-160 relating to radiation exposure—designed to yield the information necessary to make final decisions about eligibility for VA benefits, including health care, for veterans exposed to dioxin or radiation would not be sufficiently advanced by 1987, the Congress, in 1985, passed legislation, ultimately enacted as Public Law 99-166, extending the health-care eligibility until September 30, 1989.

Section 207 of S. 9 as reported and as passed by the Senate in H.R. 2616 would have extended this health-care eligibility through September 30, 1991. However, the House conferees on H.R. 2616 would not accept this provision in the legislation enacted as Public Law 100-322 on May 20, 1988.

Compensation Regulations.—Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984, enacted in October 1984, attempted to address the issue of compensation for disabilities that might have resulted from exposure to Agent Orange in Vietnam. (A parallel provision in the law dealt with compensation for disabilities possibly resulting from ionizing radiation exposure.) That law provided disability and death benefits for Vietnam veterans with chloracne and porphyria cutanea tarda which became manifest within one year after service in Vietnam and the survivors of veterans with such conditions during a two-year interim period from October 1, 1984, to September 30, 1986. Only 41 veterans and survivors applied for benefits under this provision and none of them were awarded benefits.

Public Law 98-542 also directed the VA, through a rule-making process allowing for public participation, to develop binding regulations for the adjudication of claims based on exposure to Agent Orange in order to bring about consistency in the process and the results. In developing the regulations, the Administrator was required to address specifically whether—based on medical and scientific evidence and resolving reasonable doubt in the claimant's favor—any presumptions as to serve connection should be applied in the case of certain specified disabilities. The disabilities specified in the law in the case of Vietnam veterans were chloracne, porphyria cutanea tarda, and soft tissue sarcoma. These diseases were selected based on scientific information available at the time of the enactment that supported a possible connection between them and Agent Orange exposure.

In addition to requiring the Administrator to determine which of the diseases specifically listed would have presumptions of service, connection established for them, the law included a provision requiring the Administrator, during the initial rule-making process and as the science moved forward over the years—again, by regulation and based on medical and scientific evidence and resolving doubt in the claimant's favor—to add presumptions and standards, criteria, and guidelines for evaluating the claims of veterans seeking compensation for additional diseases which may result from exposure to Agent Orange and radiation.

The Committee and the Congress approached the compensation issue in Public Law 98-542 by addressing the process by which the VA handles claims for veterans rather than by enacting a law designating specific diseases or disabilities as being presumptively service connected for VA compensation purposes—as the Committee bill would do at this time. The most important change needed in the compensation system identified by the Congress at the time that that legislation was under consideration was for the VA to make clear, rational, on-the-record determinations, regarding the procedures and standards for handling radiation claims and to ensure that a consistent approach would be followed throughout the VA—that is, at the 58 VA regional offices with their over 100 different rating boards, by the Department of Veterans Benefits in Washington, and by the VA's Board of Veterans Appeals. The Committee believed at the time the legislation was under consideration, and continues to believe, that the public—including, of course, those most directly affected, the veterans with claims for compensation based on exposure to Agent Orange or radiation and their survivors—should have a full opportunity to participate in the process of deciding how those claims should be handled and resolved. Public Law 98-542 was designed to help provide clear direction throughout the VA system on the resolution of Agent Orange and radiation claims.

The VA completed the process of developing and issuing the initial regulations required by Public Law 98-542 with the publication of final regulations on August 20, 1985. Although these regulations set forth a process for the adjudication of claims based on radiation exposure, the VA elected not to provide compensation on a presumptive basis to Vietnam veterans for any of the diseases listed in the law.

Public Law 98-542 also established the EHAC to evaluate scientific studies relating to the possible adverse health effects of exposure to ionizing radiation—and dioxin—and to submit to the Administrator periodic reports on such evaluations. The EHAC has met 7 times since its inception in 1984, and has issued 7 reports. In addition, the EHAC's dioxin panel has met separately once. The EHAC has recommended that the VA presumptively service connect one disease on the basis of Agent Orange exposure—chloracne which appears within three months of the last date of service in Vietnam.

At the Committee's May 12 hearing, three veterans' service organizations—The American Legion, the DAV, and the VFW—testified in support of S. 1692. For example, the DAV testified that, "[in our] view, a sufficient body of scientific and medical evidence exists to adequately support this measure. . . . The weight of the research conducted relating to non-Hodgkins' lymphoma is sufficient, in our opinion, to tip the balance. . . ." The VVA, while supporting presumptive benefits for NHL, stated that it supported "much stronger legislation" which would include, among other provisions, a nonrebuttable presumption for NHL. The VA and the PVA testified in opposition to S. 1692. The VA testified that "presumptive service connection is not needed for any condition which can be shown by scientific evidence to have a cause and effect relationship with the circumstances of military service. . . . We do not believe that it is sound public policy to make a sweeping presumption based on frustration or the lack of scientific evidence to support desired conclusions."

Committee bill

The Committee believes, based on its review of the scientific evidence and the testimony at its May 12 hearing, that the disease about which the most uncertainty now exists regarding a possible association with Agent Orange or service in Vietnam is NHL. Although some studies have not found any association between NHL and Agent Orange or dioxin, the findings from three of the recent studies discussed above—the Kansas Study, the Proportionate Mortality Study as to the Marines, and the VES—raise troubling concerns about a possible association between NHL and some risk factor (not necessarily Agent Orange) arising from service in Vietnam.

The Committee notes that questions have been raised regarding the findings in each of those three studies. Because of differences in exposure experienced by Vietman veterans and the farmers in the Kansas Study, the NCI and other scientists have suggested caution in extrapolating from those results any finding that Vietnam veterans face an increased risk of NHL. The VA scientists have been unable to explain why Marine Corps veterans but not Army veterans experienced an increase in NHL in the Proportinate Mortality Study. The CDC, the OTA, and the AOWG have cautioned that the small number of cases of NHL found in the VES (seven) are to few for any conclusions to be drawn from them. Nevertheless, the fact that these three studies—all with scientifically valid methodology and highly qualified investigators—have each found an excess of NHL raises troubling concerns that the Committee believes cannot be dismissed.

The Committee believes that the scientific knowledge currently available cannot provide a conclusive answer as to whether NHL is or is not associated with service in Vietnam. The CDC's SCS, expected in early 1990, is expected to provide a much clearer picture. The Committee believes that, in light of these significant studies which do raise serious suspicions regarding such an association and in light of the policy of giving veterans the benefit of the reasonable doubt in adjudicating claims for VA benefits, Vietnam veterans should not be asked to wait until the SCS is completed for the compensation issue to be at least temporarily resolved in their favor with repect to NHL.

Accordingly, section 202 of the Committee bill would provide for the payment of presumptive disability or death benefits to Vietnam veterans with NHL or their survivors when an application is made during an interim period beginning on October 1, 1988, and ending six months after the results from the SCS are submitted to the VA. Once the SCS is completed, the evidence regarding a possible association between NHL and service in Vietnam should be much more conclusive and the answer to whether NHL should be permanently service connected should be far clearer. For that reason, the benefits provided in the Committee bill would be available only to those who apply during the interim period and would not be made a part of the title 38 VA compensation provisions, although they would be equivalent—in amount and every other respect—to title 38 disability compensation and death benefits. Similarly, the Administrator would be able to suspend the application of this provision with respect to new claimants if, after reviewing the SCS results and the reports on it from the EHAC and the OTA (which would be required by section 207 of the Committee bill to be submitted to the Administrator within 60 days after the study's completion), the Administrator determines that the available scientific information does not support an association between NHL and service in Vietnam.

The Committee emphasizes that the Administrator would have clear authority under current law, in Public Law 98-542, to create a permanent presumption of service connection for NHL in Vietnam veterans if the SCS does support that association. The Committee intends to monitor developments in this area closely to ensure that, through either administrative or Congressional action, a permanent presumption of service connection is created for NHL—or any other disease in Vietnam veterans—should the scientific evidence establish an association between service in Vietnam and such disease.

As with every presumption of service connection currently in title 38, the presumption to provide benefits for NHL would be rebuttable—that is, benefits could not be paid where there is "affirmative evidence" that the disease was not incurred in Vietnam or establishing that the veteran was subject to a "recognized cause" of the disease after leaving Vietnam and before the onset of NHL. These provisions are intended to be substantially identical to the provisions contained in section 313(a) of title 38, which applies to the statutory presumptions set forth in title 38.

The Committee is concerned that information regarding new scientific developments such as the results of the SCS and other studies as well as other activities relating to Agent Orange or other risk factors possibly associated with service in Vietnam be disseminated to Vietnam veterans as quickly and efficiently as possible. In this connection, the Committee urges the VA to review the merits and cost-effectiveness of updating and maintaining current addresses in its Agent Orange Registry in order to make the Registry a useful listing of potentially affected veterans who can be contacted expeditiously.

Presumptive Service Connection of Chloracne for Vietnam Veterans

Section 203 of the Committee bill contains a provision, proposed by Senators Cranston and Murkowski, to amend section 312 of title 38 to establish a presumption of service connection for chloracne for Vietnam veterans where it or another acneform skin disease consistent with chloracne appeared within one year after service in Vietnam.

Background

Scientific evidence has established a clear association between chloracne—a severe form of acne—and the dioxin contaminant present in Agent Orange. Studies of substantial occupational exposure to dioxin over extended periods of time as well as of victims exposed through explosions, spills, and other types of accidents have demonstrated a consistent causal connection between chloracne and dioxin exposure. (*See, e.g.,* Michael Gough, *Dioxin, Agent Orange* (New York and London: Plenum Press, 1986), pp. 33, 152, 162; Clement Associates, Inc., *Review of Literature on Herbicides, Including Phenoxy Herbicides and Associated Dioxins,* vol. V, pp. 110–112 (1985), Clement Associates, Inc., *Synopsis of Scientific Literature on Phenoxy Herbicides and Associated Dioxins,* no. 2, pp. 9–10 (1985).)

Although chloracne can develop within days of exposure, it also may not appear for several months. Recurrence of Chloracne has been reported as long as 30 years after exposure. Chloracne also varies as to the level of severity. (*See, e.g.,* Gough, *infra,* pp. 29, 161–62, 186; Marshall Sittig, Handbook of Toxic and Hazardous Chemicals, (Park Ridge, New Jersey: Noyes Publications, 1981), p. 5.)

Chloracne can be mistaken for other skin diseases and thus can be difficult to diagnose, especially if dioxin exposure is not suspected. Health-care personnel in Vietnam were not specially trained to diagnose chloracne and thus may not have recognized it as such. [cite]

As noted above in the background discussion pertaining to section 202 of the Committee bill, Public Law 98–542 provided for the award of presumptive benefits during a 2-year interim period which ended on September 30, 1986, to Vietnam veterans with chloracne which was manifested within one year of service in Vietnam. In 1985, the VA amended its regulations to provide for the presumptive service connection of chloracne which was manifested within 3 months of service in Vietnam (38 C.F.R. 3.311a).

Committee bill

The Committee recognizes the difficulty that can exist in diagnosing chloracne. Therefore, the Committee bill would establish a presumption of service connection which is rebuttable—in the same way all other presumptions of service connection in chapter 11 of title 38—for chloracne where chloracne, or any other acneform skin disease that is consistent with chloracne—and thus which might have been chloracne that was incorrectly diagnosed as a condition other than chloracne—appeared within one year after the veteran's service in Vietnam. The Committee intends that the Administrator interpret this provision to allow presumptive service connection when an acneform skin disease which would not be inconsistent with the symptoms or diagnosis of chloracne appeared within one year of service in Vietnam. The Committee believes a one-year period is consistent with other presumptions and is appropriate in light of the scientific evidence that chloracne is not always manifested immediately after exposure to dioxin. Sittig, *infra*, at p. 2.

Extension of Health-Care Eligibility Based on Agent Orange or Radiation Exposure

Section 204 of the Committee bill contains a provision proposed by Senators Cranston and Murkowski, which is derived from section 207 of S. 9, to amend section 610(a)(1)(G) of title 38 to extend, by 15 months, from September 30, 1989, to December 31, 1990, VA health-care eligibility for Vietnam veterans who may have been exposed to dioxin (and certain veterans exposed to ionizing radiation).

Background

As noted above in the background discussion pertaining to section 202 of the Committee bill, Public Law 97–72 provided Vietnam veterans who may have been exposed to dioxin (and certain veterans exposed to ionizing radiation) with eligibility for VA health care for any disability except for a disability found to have resulted from some cause other than exposure to dioxin (or ionizing radiation), without requiring a determination of an association between that exposure and such disabilities. Given the scientific uncertainties regarding the effect of human exposure to dioxin and in light of the epidemiological studies underway on the effects of such exposure, the Congress believed that it was not fair to deny VA health care to Vietnam veterans when science might later determine that their disabilities were linked to their service in Vietnam.

Section 207 of S. 9 as reported and as passed by the Senate in the form of a substitute amendment for the text of H.R. 2616 would have extended this health-care eligibility to September 30, 1991. However, that provision was not accepted by the House conferees in the legislation enacted as Public Law 100–322 on May 20, 1988. The Committee report on S. 9 sets forth the background and justification for the provision (S. Rept. No. 100–215, pages 91–110).

Committee bill

The Committee believes that sufficient questions have been raised regarding the effects of human exposure to Agent Orange and exposure to low-level ionizing radiation to warrant continuation of health-care eligibility for Vietnam veterans and ionizing radiation-exposed veterans, at least until the CDC's Selected Cancers Study is completed. Accordingly, section 204 of the Committee bill would extend the special VA health-care provisions for these veterans through December 31, 1990. Under current law, such health-care eligibility would terminate after September 30, 1989.

Income Exclusion of Certain Payments for Purposes of Eligibility of Certain Needs-Based Veterans' Benefits

Section 205 of the Committee bill, proposed by Senators Cranston and Mitchell and derived from S. 1805, would amend sections 415(f)(1) and 503(a) of title 38 to exclude from computation of income for purposes of VA needs-based pensions, parents' DIC, and health care based on financial status, payments received in settlement of or as the result of a judgment in litigation based on injuries or disabilities alleged to have been incurred as a result of events that occurred during the active-duty service of a veteran—as long as the annual amount of such payments does not exceed the annual income limits set for pension benefits for a veteran with the same marital status and number of dependents.

Background

The VA administers several "needs-based" benefits programs for which eligibility and the monthly rates payable are based upon the total income of the beneficiary and his or her immediate family. These benefits are principally non-service-connected disability pension paid under section 521 of title 38 to certain war-time veterans who have attained age 65 or who have permanent and total disabilities incurred subsequent to their military service; non-service-connected survivors' pension paid under section 541 to the spouses and children of certain war-time veterans who die subsequent to their service due to causes unrelated to their service; and dependency and indemnity compensation to parents (parents' DIC), paid under section 415 to the parents of individuals who die of any cause while on active duty or, if subsequent to service, as a result of a disease or disability which arose while the veteran was on active duty.

In addition, the eligibility criteria for VA hospital, nursing home, or outpatient care include certain income criteria, and the eligibility criteria for domiciliary care include an income limit and a VA determination of lack of adequate means of support.

The determination of annual income for purposes of the pension benefits and health-care services is governed by section 503(a) of title 38, and for purposes of parents' DIC, by section 415(f)(1), both of which sections provide that "all payments of any kind or from any source" are to be included in computing annual income unless specifically excluded. Sections 521 and 415 of title 38 provide income the amount of pension and parents' DIC benefits, respectively, payable are reduced by the amount of the beneficiary's (and the beneficiary's immediate family's) annual income—that is, a dollar-for-dollar offset of these benefits against all non-excludable income. Section 622(b) of title 38, pertaining to income-related health-care eligibility requirements, provides specific income thresholds which, if exceeded by the veteran's (and the veteran's immediate family's) total annual income, modify the eligibility for VA health care.

The provisions of S. 1805 would specifically have excluded payments made in settlement of *In re "Agent Orange" Product Liability Litigation,* MDL 381 (E.D.N.Y.) —— F.Supp. —— (July 5, 1988), from being counted as income for purposes of needs-based VA benefits and services. This class action was begun as a series of separate actions filed beginning in 1978 by Vietnam veterans and the survivors of Vietnam veterans against the U.S. Government and certain chemical companies which had produced Agent Orange. The claims against the United States were dismissed by the District Court on the basis of the *Feres* doctrine (which bars suits against the U.S. Government for injuries arising from active-duty military service). The merits of the claims against the chemical companies were not resolved, but the companies agreed to settle the case for a total of $180 million. Those funds have not been paid out pending the U.S. Supreme Court resolution of appeals regarding the settlement. The Supreme Court's denial of certiorari in the final appeals on June

30, 1988, cleared the way for distribution of the settlement funds, which is expected to begin in early 1989.

Under the settlement distribution plan, Vietnam veterans exposed to Agent Orange who suffer 100-percent disabilities arising from non-traumatic, non-accidental, and non-self-inflicted causes would be eligible for total payments up to a maximum of approximately $12,800 to be distributed over a 7-year period. Survivors of veterans would be eligible for one-time payments up to a maximum of $3,400.

At the Committee's June 9 hearing, S. 1805 received general support and no opposition except from the VA, which testified that the bill "would be discriminatory in favor of claimants receiving income from the Agent Orange settlement and would give rise to demands that other categories of income not be considered in determining entitlement to benefits" and that the "provisions in S. 1805 relating to VA pensions, in particular, are contrary to the basic purpose of the VA pension program, which is to provide benefits based upon need".

Committee bill

Section 205 of the Committee bill would provide that payments—as long as they are in an amount not exceeding the annual income permitted for veteran's pension benefits (based on marital status and number of dependents)—received in settlement of or as the result of a judgment in litigation which was based on injuries alleged to have resulted from events that occurred during the veteran's active-duty service would not be countable as income for purposes of the VA needs-based benefits and services described above.

The Committee bill thus would provide the protection afforded by such an income exclusion to veterans or survivors who receive payments as a result of any litigation which was based on injuries allegedly arising during the veteran's service. This limited provision would prevent the ironic result of a veteran or survivor losing VA mean-tested benefits because of payments received in connection with service.

The Committee bill would ensure that the neediest veterans—those qualifying for needs-based pensions—would not be prevented from receiving any gain from service-based litigation payments they receive. For example, the maximum annual income limit under the VA pension program for a veteran-pensioner (other than a World War I veteran) who has no dependents and is not homebound or in need of attendance is $6,214. Without the income exclusion a veteran-pensioner would not be able to gain any benefit from the maximum annual $1,800 payment (paid annually for 7 years) currently anticipated for veterans under the Agent Orange litigation settlement. Rather, the benefit of those payments would go to the U.S. Government. However, in order to limit the costs of this provision and to focus the benefits of it on those most in need, the Committee bill limits the amounts of the payments that would be excluded.

The Committee believes that, in the limited circumstances set forth in the Committee bill—where the veteran's disability or death allegedly arose from service and the payments received with regard to it are relatively small—it would not be equitable for those payments in effect to be paid to the Government and not the veteran or his or her survivors by virtue of the offsetting reduction in VA pension or parents' DIC benefits required under current law.

In connection with VA health-care eligibility, the Committee notes that, by virtue of section 622(f) of title 38, which provides for "attributable income" for certain health-care eligibility purposes to be "determined in the same manner" as income is determined for pension benefits, the amendment providing for the exclusion from income for pension purposes would automatically apply to VA health-care eligibility.

Agent Orange Scientific Evidence Review

Section 206 of the Committee bill, which is derived from S. 1510, introduced by Senators Kerry and Cranston, and was included as section 115 of S. 9, is a freestanding provision which would require the VA to contract for a comprehensive review to be conducted—by the National Academy of Sciences (NAS) or, if the NAS declines, another appropriate nonprofit scientific entity—of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange and its component compounds, and that a report be submitted to the VA not later than October 1, 1989, on the review's results as to the weight of the evidence on this subject. The Administrator would be required, within 60 days after receipt of such report, to decide whether the VA's regulations regarding compensation for diseases based on Agent Orange exposure should be amended and to advise the Senate and House Veterans' Affairs Committees of such decision.

Background

As noted above in the background discussion pertaining to section 202 of the Committee bill, numerous studies have been conducted relevant to the human health effects of exposure to Agent Orange. In many respects, the results of those studies have been contradictory and inconclusive. No up-to-date, unified analysis exists of the preponderance of the results obtained from such studies. The background and justification for this provision are set forth in the Committee report on S. 9 (Rept. No. 100–215, pages 76–81).

Committee bill

In order to provide a unified compilation and analysis of the results from the various scientific studies, the Committee bill would provide for the NAS to undertake a review of all of the scientific evidence, literature, and studies pertaining to the adverse health effects in humans of exposure to Agent Orange and its component compounds, and issue a report summarizing the Academy's conclusions as to the weight of the evidence on this subject. The VA would be required to submit the report to the Senate and House Veterans' Affairs Committees by October 1, 1989. The VA also would be required, within 60 days after receiving such report, to decide whether the VA's regulations regarding compensation for diseases based on Agent Orange exposure should be amended and to advise the two Committees of such decision at that time. Appropriations of up to $1 million would be authorized to carry out the study.

It is the Committee's hope that the Academy would be willing to undertake such a scientific review and issue a report, as outlined above, which would provide an authoritative statement regarding the evidence pertaining to human exposure to Agent Orange and could help guide future public-policy decision making in this area.

Modification of Procedures for Consideration of Certain Studies

Section 207 of the Committee bill contains a provision, proposed by Senators Cranston and Murkowski, which, with respect to the epidemiological study of any long-term adverse effects of service in Vietnam mandated by Public Law 96-151 (as expanded by Public Law 97-72), would require that—

(a) the dioxin panel of the EHAC's Scientific Council and the OTA review the reports submitted upon completion of each of the studies and provide written reports on them to the VA and the Senate and House Veterans' Affairs Committees within 60 days after receipt of each study report;

(b) the Administrator decide within 60 days after receiving the EHAC and OTA reports whether the VA's regulations pertaining to compensation based on Agent Orange exposure should be amended and to advise the two Committees of such decision and the reason therefor; and

(c) the studies on which the EHAC panel and OTA must submit reports include any report by or published on behalf of the entity responsible for carrying out the study which sets forth study findings.

(The same procedures also would be established with respect to studies on the health effects of exposure to ionizing radiation described in Public Law 98-160 and the VA regulations pertaining to compensation based on such exposure.)

With respect to studies not described in Public Laws 96-151 or 98-160, section 207 of the Committee bill would require the Administrator, within 60 days after receiving a report from the EHAC panel based on any such study and recommending that the VA Agent Orange or ionizing radiation regulations be amended, to decide whether such regulations should be amended and to advise the two Committees of such decision, and the reasons therefor, at that time.

Background

As discussed in the background section pertaining to section 202 of the Committee bill, Public Law 98-542 directed the VA to establish guidelines to ensure the consistent adjudication of claims based on dioxin or ionizing radiation exposure. Included in those provisions were requirements regarding review of the epidemiological studies required under Public Laws 96-151 and 98-160. Public Law 98-542 also established the EHAC to aid the VA in its evaluation of such studies and reconsideration and revision of VA regulations pertaining to Agent Orange and ionizing radiation exposure.

Committee bill

The Committee believes that the VA must promptly evaluate studies relevant to Vietnam veterans' exposure to Agent Orange (or certain veterans' ionizing radiation) upon such studies' completion in order to determine whether changes in its regulations relating to dioxin (and ionizing radiation) exposure should be revised. The Committee desires that the VA receive and utilize the expertise of the EHAC with respect to its scientific assessment of such studies and its decisions regarding such regulations, as Public Law 98-542 intended. Because of the comprehensive scope of the studies mandated by Public Laws 96-151 and 98-160, the Committee believes that it also would be valuable for the VA to have the benefit of the OTA's expert assessment of the results of such studies.

Accordingly, section 207 of the Committee bill would modify the requirements set forth in Public Law 98-542 to require the EHAC scientific panels and the OTA, with respect to studies mandated by Public Laws 96-151 and 98-160, to review and provide written reports to the Administrator within 60 days after the completion of such studies. The Administrator would then have 60 days to decide if the VA's regulations pertaining to Agent Orange or ionizing radiation should be amended and would be required to so advise the Senate and House Veterans' Affairs Committees of that decision and the reasons therefor.

In addition, the Administrator also would be required, if the EHAC recommends that the VA's Agent Orange or ionizing radiation regulations be amended on the basis of other studies relevant to Vietnam veteran's exposure to Agent Orange or certain veterans' ionizing radiation exposure, to decide within 60 days after receiving the EHAC's report whether to amend the regulations and to so advise the two Committees of the decision and the reasons therefor.

TITLE III—EDUCATION AND REHABILITATION

Part A—Rehabilitation for Veterans with Service-Connected Disabilities

Training and Work Experience Without Pay in State and Local Government Agencies

Section 301 of the Committee bill which is derived from sections 105 of S. 2307, an Administration proposal, would amend section 1515 of title 38 to allow the use of State and local government agencies, supported in whole or in part with federal funds, to provide uncompensated training or work experiences for service-connected disabled veterans' programs of vocational rehabilitation under chapter 31. The Administrator would be required to prescribe regulations for monitoring the training and experience and otherwise ensuring that they are in the best interest of the veterans and the Federal Government.

Background

Under chapter 31 of title 38, the VA administers programs of vocational rehabilitation for veterans with service-connected disabilities who have employment handicaps. Current law (section 1515) allows the VA to use the facilities of Federal agencies to provide a veteran participating in a chapter 31 program with training or work experience for no or nominal pay as part of the veteran's program if the VA determines that the training or work experience is necessary for the veteran's rehabilitation. This can be a valuable option, either leading to employment of the veteran at the agency involved or contributing to the employment credentials of the veteran. However, the value of the option is reduced for those veterans who reside in areas remote from Federal facilities. However, those veterans may live near State or local government facilities which could be used to provide similar training or work experiences.

Committee bill

The Committee bill would give the VA the authority to expand opportunities for an eligible service-connected disabled veteran's program of vocational rehabilitation under chapter 31 to include training or work experience with State or local Government facilities. This should afford veterans who do not reside near a Federal facility an opportunity to participate in such a program and provide other veterans a broader range of opportunities for participation. The Committee bill is designed to guard against potential abuse of veterans' unpaid services by requiring the Administrator to prescribe regulations providing for the monitoring of the veteran's training or work experience and otherwise ensuring that the work program is in the best interest of the veteran.

Removal of Bar to Use of For-Profit Organizations for Employment Assistance and Independent Living Programs

Section 302 of the Committee bill would amend sections 1517(a)(2)(c)(iv) and 1520(a)(1) of title 38 to allow the VA to contract with for-profit organizations to provide employment assistance to certain service-connected disabled veterans under the chapter 31 program and to provide programs of independent living services for severely handicapped veterans. Contracts with for-profit organizations for these purposes would be authorized only in cases in which the Administrator determines that comparable services are not available from, or cannot be provided cost-effectively through, public or nonprofit organizations.

Background

Under current section 1517(a)(1), veterans with service-connected disabilities who have either participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 receive Federal assistance in order to provide vocational rehabilitation services, and are determined by the VA to be employable, are furnished assistance in obtaining employment. Paragraph (2)(C) of section 1517(a) provides that such assistance may include the use of job development and placement services of certain specified public agencies and "any other public or nonprofit organization having placement services available".

Under section 1520, the VA is authorized to enter into contracts with public or nonprofit private agencies to provide programs of independent living services and assistance to certain service-connected-disabled veterans who are severely handicapped.

VA testimony at the June 16 hearing confirms that contract authority is not used as much as possible and that the VA's resource base is limited by lack of authority to contract with for-profit organizations.

Further, in the July 1, 1988, letter responding to Chairman Cranston's post-hearing questions, VA Administrator Turnage noted that "some veterans require more extensive services and followup for specific job development and direct placement. This requires a great deal of labor and intensive activity by a person trained in this area and this is rarely available through a public or not-for-profit service provider."

Committee bill

The Committee bill would authorize the VA to use for-profit organizations to provide employment assistance to disabled veterans under section 1517(a)(2)(C) of title 38 and for conducting programs of independent living services for severely handicapped veterans under section 1520(a)(1) of title 38, when the Administrator determines that comparable services are not available from, or cannot be provided cost-effectively through, public or non-profit organizations. The Committee intends that VA use this authority prudently and only in the specified conditions.

Extension of Temporary Programs of Trial Work Periods and Vocational-Rehabilitation Evaluations

Section 303 of the Committee bill would amend section 363 of title 38 and section 111(c) of Public Law 98-543, to extend for one year, through January 30, 1990, the temporary programs of trial work periods and vocational-rehabilitation evaluations for veterans receiving compensation at the monthly rate payable for service-connected veterans with a total-disability rating based on a determination of individual unemployability, hereinafter referred to as an "individual unemployability rating".

Background

The temporary program for trial work periods and vocational rehabilitation evaluations for veterans with individual unemployability ratings was established by the Congress in 1984 in section 111 of Public Law 98-543. The program is designed to encourage and assist a veteran who is awarded an individual unemployability rating to attempt to return to the workforce.

Under the evaluation program, when a veteran is awarded an individual unemployability rating, the VA evaluates his or her ability to achieve a vocational goal. If the veteran fails to complete the evaluation for reasons other than reasons beyond the veteran's control, the VA terminates payments based on the individual unemployability rating (but not the schedular disability rating) until the evaluation is completed.

If achievement of a vocational goal is reasonably feasible, an individualized written plan of vocational rehabilitation under chapter 31 of title 38 must be prepared for the veteran. If the veteran fails, after due notice of the consequences, to pursue the vocational rehabilitation program described in the plan, the law (section 363(c)(3)(B)) requires that the results of the veteran's evaluation be considered in the next scheduled review of the veteran's individual unemployability rating.

A significant proportion of the disabled veterans evaluated under this program have been determined to have the potential to pursue a vocational goal despite their seriously disabling conditions. During the first three years of the program, 1,013 were evaluated and the achievement of a vocational goal was found to be reasonably feasible for 248. Of these 248 totally disabled veterans, 118 have pursued or are pursuing a vocational rehabilitation program.

Congress established the temporary program for trial work periods with certain protections for veterans who try to return to work. A veteran with an individual unemployability rating who regains employment under this program during the 4-year period would not, as a result of doing so, be determined to have regained the ability to follow "a substantially gainful occupation" (the standard used in VA regulations, 38 C.F.R. 4.16, for deciding whether the veteran is or is not entitled to the rating) unless the veteran maintains that employment for at least 12 consecutive months.

Committee bill

The Committee bill would extend for one year, from January 31, 1989, until January 31, 1990, the temporary program for trial work periods and vocational-rehabilitation evaluations for veterans with individual unemployability ratings. The Committee notes that the extension is limited to one year because the Committee did not receive the VA's report on the implementation of section 363 of title 38 for the period from February 1, 1985, through January 31, 1988 until July 28, 1988. A one-year extension will allow the Committee to evaluate the report and program and take any legislative action necessary in the next session of Congress.

Part B—Education Programs

Subpart 1—Montgomery GI Bill Provisions

Eligibility for Individuals Discharged for Pre-Service Medical Conditions or Due to Reductions in Force

Section 311 of the Committee bill—which is derived in part (with respect to those discharged for pre-service medical conditions) from section 103 of S. 2307, an Administration proposal—would amend chapter 30 of title 38 to add a new section 1417 providing, effective July 1, 1985, that a Montgomery GI Bill (MGIB) participant who is discharged from military service (a) due to a pre-existing medical condition which the Administrator determines is not service connected or (b) involuntarily, due to a reduction in force (RIF) and, as a result, does not meet the length-of-service requirement for MGIB entitlement or 30 months on active duty of a 36-month enlistment—would be entitled to one month of educational assistance for each month of active duty served.

Background

Under section 1411(a)(1)(A) of title 38, in order to earn MGIB entitlement solely by virtue of active-duty service, an individual initially entering on active duty after June 30, 1985, must serve at least three years of continuous active duty or, if the individual's initial period of active duty is for less than three years, serve at last two years of continuous active duty. Exceptions are provided for those who are discharged or released for a service-connected disability, hardship, or the convenience of the Government. In the case of a discharge for the convenience of the Government the individual must have completed at least 20 months of continuous active duty if the initial period of obligated service was for less than three years and at least 30 months of such duty if the initial period of obligated service was for three years or more. Otherwise eligible MGIB participants who are discharged for the convenience of the Government and meet the 20-month or 30-month criteria, as applicable, are entitled to 36 months of basic MGIB educational assistance ($300 per month for full-time study). Those discharged due to a service-connected disability without serving their full two-year or three-year commitments are entitled to one month of basic MGIB educational assistance for each month served.

Individuals who, without completing two or three years of initial tours of duty, as discussed above, are discharged for a non-service-connected condition that pre-existed their entering on active duty have no MGIB entitlement.

Also, under current law, individuals who do not at the time of entering active duty decline to participate in the MGIB experience $100-per-month reductions in their basic pay for twelve months. There is no provision for restoration of the difference in pay rates for individuals who do not earn, or do not use entitlement, MGIB benefits.

Section 103 of S. 2307 as introduced would have provided MGIB participants who are discharged form military service for a pre-existing medical condition with entitlement to a payment equaling the entire amount by which his or her military pay was reduced for participation in the chapter 30 program, less the amount of any chapter 30 educational assistance received. At the Committee's May 25 hearing, this provision received general support and no opposition from the witnesses who testified on it, except that the Association of the U.S. Army and the Retired Officers Association proposed that, rather than provide for a refund of the basic pay reduction, entitlement to education benefits be granted. In the Committee bill, the provision as introduced has been revised to provide one month of entitlement for each month of active duty served. In light of the fact that the MGIB as an educational assistance program, the Committee believes that this approach is the most appropriate one for remedying the inequity which is created when individuals experience pay reductions in order to participate in the MGIB but, through no fault of their own, are unable to meet the length of service requirements and, thus, are denied the opportunity to use these educational benefits.

Moreover, the Committee does not at this time favor the idea of providing any exceptions to the policy of non-refundability of MGIB pay reductions, which it considers a fundamental principle of the program. The Committee believes that establishing a policy which could be interpreted as providing the equivalent of refunds to a particular group or groups of veterans who are unable to use the MGIB because of reasons beyond their control, would make it difficult to resist the claims of others which may have equal validity. Thus, the Committee is concerned that a proliferation of exceptions could confuse and complicate the clear, straight-forward nature of the program, under which a participant's pay is reduced and the reductions are irrevocable. The Committee further notes that the amount of MGIB pay reductions are not considered taxable income, and that servicemembers who do not elect to participate acknowledge in writing that the $1,200 pay reduction cannot be recouped if the servicemember does not use his or her MGIB benefits.

With respect to involuntary RIFs, the Committee is advised that a $100-million shortfall in the Coast Guard's FY 1988 appropriation required the Coast Guard in May 1988 to reduce the number of its enlisted personnel by approximately 850. The Coast Guard initially sought to accomplish this reduction through a voluntary early release program under which 609 personnel requested and received discharges. Commanding officers were required to ensure that MGIB participants who sought the early release were advised that, if minimum length-of-service requirements were not met, they would be denied MGIB benefits. When the voluntary early release program did not fully achieve the required personnel reduction goals, an involuntary RIF became necessary. As a result, 241 service members were discharged, 21 of whom were MGIB participants. These 21 MGIB participants were thus precluded from meeting the length-of-service requirements for MGIB due to their involuntary RIF separations, and the reductions in their pay for such benefits cannot be restored.

Committee bill

The Committee bill would recognize the circumstances of both categories of MGIB participants described above who are involuntarily discharged for reasons beyond their control, by providing them with one month of educational assistance allowance for each month of active duty served. This is the same benefit provided under current law for those discharged for service-connected disabilities prior to completion of minimum-service requirements. In both cases, the entitlement would be provided retroactively. In the case of those discharged for pre-service medical conditions, the provision would be effective as of the beginning date of the MGIB in order to provide relief to all those have been affected. In the case of those involuntarily discharged as a result of a RIF, the provision would be effective October 1, 1987, in order to deal with the only such instance of which the Committee is aware.

Opportunity for Enrollment for Certain Active-Duty Non-Participants

Section 312 of the Committee bill would amend subchapter II of chapter 30 of title 38, relating to MGIB basic educational assistance, so as to provide for a one-time 120-day MGIB enrollment period for servicemembers, who first entered active duty during the period July 1, 1985, through June 30, 1988, and who at the time of their entry on active duty, elected not to participate in the MGIB, to withdraw their election. In order to enroll, such an individual would have to agree to a basic-pay reduction of $100 per month during the twelve-month period following enrollment and to make a commitment to serve two years of service in addition to any period of service to which he or she is obligated at the time of enrollment.

Background

According to a report summarizing the findings of a Congressional delegation visit to recruit training bases at each of the four services ("Trip Report to the Committee on Veterans' Affairs on the New GI Bill, Its Implementation and Effectiveness", recruit training officers at Army, Navy, Air Force, and Marine Corps recruit training bases acknowleged that in the early stages of the MGIB some recruits were provided inadequate information on the program. These recruits were not afforded the full opportunity for participation that the Congress intended.

In addition, in testimony before the Subcommittee on Education, Training, and Employment of the House Committee on Veterans' Affairs on August 15, 1988, the Navy MGIB program manager told the Subcommittee:

> There were a large number of people who decided to disenroll from the program because they probably had never heard about it from their recruiters, and when they got to the recruit training commands, they weren't given a proper presentation on the program. And so they decided to disenroll. In the first year or so, I received a large number of phone calls and also congressional inquiries where individuals regretted their decision to disenroll.

Committee bill

The Committee bill would provide a one-time, 120-day window of opportunity—beginning on December 1, 1988—for these servicemembers who entered on active duty in the three-year-period ending on June 30, 1988, but elected to not be enrolled in the MGIB. Individuals who withdraw their election not to enroll would be required to make a commitment to serve at least two additional years of active-duty service and agreeing to a $100-per-month reduction in their basic pay during the 12-month period following their election to enroll. The Committee believes that, because the MGIB was not consistently advertised and implemented effectively in its early stages, the recruits who were penalized as a result should be given the opportunity to reconsider their initial decision not to participate. The Committee further believes that, in order to avoid detracting from retention of high-quality active-duty servicemembers, the two additional years of obligated active-duty service required in the Committee bill provision is essential.

Secondary School Diploma Requirements

Section 313 of the Committee bill would amend sections 1411 and 1412(a) of title 38 relating to the criteria for entitlement to MGIB benefits, to overrule the VA's interpretation that Vietnam-era veterans who served on active duty from October 19, 1984, through June 30, 1988, must have received a secondary school diploma (or an equivalency certificate) by June 30, 1988, in order to be eligible for the MGIB and, thus, to receive "combined" Vietnam-era GI Bill and MGIB benefits (under section 1415(d) of title 38) which will become available on January 1, 1990, following the termination of the Vietnam-era GI Bill (chapter 34) on December 31, 1989. The deadline by which the veteran must have a high school diploma would be extended until the veteran begins pursuit of a program of education using MGIB benefits. Further, this section of the Committee bill, which is derived in-part from section 102 of S. 2307, an Administration proposal, would amend sections 1411(a)(2) and 1412(a)(2) of title 38 and amend section 2132(a)(2) of title 10, relating to MGIB eligibility criteria for members of the Selected Reserve, to eliminate the reference to a high-school-diploma equivalency certificate as a prerequisite to eligibility and require, instead, that an individual have a secondary-school-diploma equivalent as determined by the Secretary concerned pursuant to regulations prescribed by the Secretary of Defense.

Background

As interpreted by the VA, current law—section 1411(a)(2) for basic educational assistance entitlement based on service on active-duty-service alone and section 1412(a)(2) for basic educational assistance entitlement based on a combination of active-duty service and service in the Selected Reserve—requires those who have eligibility for the Vietnam-era GI Bill and were on active duty from October 19, 1984, through June 30, 1988, but had not attained a high school diploma (or an equivalency certificate) by the latter date would have entitlement only to benefits under the Vietnam-era GI Bill (chapter 34), which expires December 31, 1989, and would not have the opportunity to combine the Vietnam-era and MGIB benefits under section 1415(d) beginning January 1, 1990. Under the combined benefits provisions, individuals will receive $300 per month for 36 months in basic MGIB assistance for full-time pursuit and have this amount increased by an amount equal to one-half of the educational assistance allowance that would be applicable to the individual under chapter 34.

The Committee believes that many individuals who were on active duty from October 19, 1984 through June 30, 1988, who intend to combine the Vietnam-era and MGIB programs beginning January 1, 1990, may still be unaware of the VA interpretation that they are required to have received a high school diploma by June 30, 1988, in order to qualify for combined benefits. The Committee believes it is in the interest of these individuals to have an extended period of time to gain such a diploma so they can use their combined benefits after January 1, 1990.

With respect to the high-school-diploma equivalency certificate, current law (sections 1411(a)(2) and 1412(a)(2) of title 38 and section 2132(a)(2) of title 10) provides that, to be considered eligible for the MGIB, an individual must have a secondary school diploma or an equivalency certificate.

The term "equivalency certificate" has been used in section 1691 of title 38 since 1970 and the VA has interpreted it to mean a "General Education Diploma (G.E.D.) Certificate". However, as noted by the VA in its April 12, 1988, letter transmitting the proposed legislation, recent Department of Defense directives relating to entitlement qualifications have expanded the definition of "equivalency certificate" to include, for example, a certificate gained through a correspondence school or by passing a State high school proficiency examination. Although the Committee believes the change proposed could be made by a change in the applicable regulation, it has acceded to the Administration proposal in order that the matter be free from doubt.

Committee bill

The Committee bill would extend, from June 30, 1988, until the date on which the veteran begins to pursue a program of education with MGIB assistance, the deadline by which an individual who otherwise qualifies for combined Vietnam-era GI Bill-MGIB benefits under section 1415(d) of title 38 must obtain a secondary school diploma (or an equivalency certificate) in order to use such benefits. The effect of the proposed amendment would be simply to make the veteran's ability to use MGIB benefits contingent upon obtaining the diploma (or certificate);

Further, the Committee bill would change the requirment for a secondary school diploma/equivalency certificate requirement to permit the Secretary of Defense to establish by regulation the definition of an adequate equivalent. The Committee believes that the secondary school requirement was intended to assist the military in obtaining better qualified personnel and that the requirement should conform, as proposed in the Committee bill, to the standards acceptable to the Armed Forces.

Choice of Benefits for Certain Reservists

Section 314 of the Committee bill, which is derived from section 104 of S. 2307, an Administration proposal, would amend section 1412 of title 38 to enable a veteran who is eligible for MGIB benefits under that section by reason of having completed two years of active duty and is obligated to serve four continuous years in the Selected Reserve, but who is separated prior to the completion of that Selected Reserve obligation due to disability, the opportunity to elect to receive benefits under either section 1412 or under 1411. Benefits under section 1412 would provide a greater monthly payment while benefits under section 1411 would provide a longer period of entitlement.

Background

Under current law (section 1413), an individual who has earned basic MGIB educational assistance under section 1411 by completing two years of active-duty service is entitled to receive benefits of $250 per month for 36 months. Under section 1412, an individual who earns such assistance by completing two years of active-duty service and, after discharge from active duty, serving four years in the Selected Reserve is entitled to receive benefits of $300 a month for 36 months. However, if an individual earning MGIB benefits under section 1412 is discharged from the Selected Reserve due to disability after serving only a short period in the Reserves, he or she could have far fewer number of months of entitlement, albeit payable at the higher $300 rate, than the number of months of entitlement available if his or her entitlement had been based solely on his or her active duty service under section 1411. The Committee agrees with the Administration that this is an anamolous result.

Committee bill

The Committee bill would give these MGIB participants this right of election so that they will be no worse off than if they had not made a four-year commitment to Selected Reserve service.

Subpart 2—Provisions Relating to Montgomery GI Bill and Certain Other Programs

Refresher, Remedial, and Deficiency Courses

Section 321 of the Committee bill, which is derived in part from section 203 of S. 2307, an Administration proposal, would, effective September 30, 1989, amend sections 1434, 1641, and subchapter II of chapter 35 of title 38 and section 2136 of title 10 to provide uniformly for the pursuit of refresher, remedial, and deficiency courses under each of the VA programs of educational assistance other than the Vietnam-era GI Bill, without a charge to entitlement for up to five months' payment of allowance for such courses and, after that period of time with a charge to entitlement. The Administrator would be required to, not later than February 1, 1991, to submit to the Congressional Committees on Veterans' Affairs a report on the use of these courses with and without entitlement.

Background

Under current law, the Montgomery GI Bill (chapter 30 of title 38 and chapter 106 of title 10) does not provide for the pursuit of remedial, refresher, or deficiency courses; the Post-Vietnam Era Educational Assistance Program (known as "VEAP", chapter 32 of title 38) provides for the pursuit of such courses with a charge to entitlement; The Vietnam-Era GI Bill (chapter 34) provides for such pursuit, without an entitlement charge, if the student is a veteran (rather than a service member on active duty); and the program of educational assistance for certain dependents and survivors (chapter 35) provides for such pursuit without an entitlement charge for a spouse or surviving spouse and with an entitlement charge for a child.

As introduced, S. 2307 reflected the Administration's policy that the MGIB, VEAP, and dependent's and survivors' programs should be amended to apply a uniform policy of permitting eligible individuals to receive payment for these courses with a charge to entitlement in all cases.

Over the history of the Chapter 34 program, 930,318 veterans and servicemembers have enrolled in refresher, remedial, and deficiency courses. Refresher, remedial, and deficiency courses can be a valuable tool in helping prepare students eligible for VA education benefits to survive academically in a postsecondary program of education and can also be very beneficial for veterans of the all-volunteer force under the MGIB.

In response to a written question submitted by Chairman Cranston at the Committee's May 25 hearing veterans' service organizations, military and higher education associations expressed support for not charging entitlement for refresher, remedial, and deficiency courses under chapter 30, 32, 34, and 35 of title 38 and chapter 106 of title 10.

Committee bill

The Committee bill would allow pursuit of refresher, remedial, and deficiency courses under chapters 30, 32, and 35 of title 38 and chapter 106 of title 10 without a charge to entitlement for up to five months' payment of allowances for such courses and with a charge thereafter. The Administrator would be required to submit to the Congress and the Committees on Veterans' Affairs not later than February 1, 1991, a report on the use of these courses with and without entitlement.

The Committee believes there is no significant reason to treat participants in refresher, remedial, and deficiency courses under chapters 30, 32, 34, and 35 differently depending on the program for which they are eligible. The Committee agrees with the Administration that—except with respect to the Vietnam-era GI Bill, which will terminate on December 31, 1989, and which the Committee believes should thus not be altered—a uniform policy should be established for the pursuit of these courses. The Committee does not agree, however, that a charge to entitlement should be made for the first few months of such pursuit. In the Committee's view, allowing for five months without a charge to entitlement would meet most individuals' needs for such training and limit and abuses.

Tutorial Assistance

Section 322 of the Committee bill, which is derived from section 4 of S. 2383, would, effective October 1, 1988, amend subchapter II of chapter 30 of title 38, section 2131 of title 10, section 1692 of title 38, and subchapter III of chapter 32 so as to make MGIB and VEAP participants eligible for individualized tutorial assistance, to increase the monthly allowance for such assistance under the Vietnam-era GI Bill from $84 to $100 and the overall maximum from $1,008 to $1,200, and make these increased amounts applicable under the MGIB and VEAP. The MGIB and VEAP provisions would also be amended so that entitlement would be charged at a rate equal to the proportion that 50 percent of the tutorial assistance paid bears to the full time rate of the monthly educational assistance allowance for full time pursuit.

Background

A total of 236,139 veterans and eligible persons have received benefits under the tutorial assistance program available under chapters 34 and 35 of title 38 since that program was enacted in 1970, but such assistance is not available under current law to MGIB or VEAP participants. To be eligible for such tutoring under chapter 34 or 35 the individual must be enrolled in and pursuing a postsecondary course of education on a half-time or greater basis and have a deficiency in a subject which is required as part of, or is a prerequisite or indispensable to the satisfactory pursuit of, an approved program of education. Tutorial assistance may not exceed $84 per month or an overall maximum of $1,008 and is provided without a charge to entitlement.

All the witnesses at the May 25 hearing who testified on this provision supported it except for the Veterans' Administration which indicated support if the tutorial assistance is charged against the veteran's entitlement.

Committee bill

The Committee bill would make MGIB and VEAP participants eligible for individualized tutorial assistance and increase the monthly allowance from $84 to $100 and the overall maximum from $1,008 to $1,200. Entitlement would be charged at a rate equal to the proportion that 50 percent of the tutorial assistance paid bears to the monthly educational assistance allowance for full-time pursuit.

Payment for tutorial assistance for chapter 30 and 32 participants would be made from the VA's Readjustment Benefits account and for chapter 106 participants from the Department of Defense and Department of Transportation accounts which fund the chapter 106 program.

The Committee believes that the tutorial assistance program has been valuable for Vietnam-era veterans and can be just as valuable for VEAP and MGIB participants but that, in the interest of preventing any abuses that might result from totally "free" use of this benefit, the modest charge to entitlement proposed in the Committee bill should be made. The chapter 34 and 35 program provisions which provide for no charge to entitlement for tutorial assistance would not be changed.

Cooperative Training

Section 323 of the Committee bill, which is derived from section 101 of S. 2307, an Administration proposal, would amend sections 1402(3) and 1602(2) of title 38 to make cooperative training available under the MGIB and VEAP, with payment provided for at the rate of 80 percent of the basic full-time monthly rate otherwise payable, with entitlement charged proportionately.

Background

Cooperative training consists of courses in which instruction alternated between formal classroom, laboratory or similar instruction and practical training in a business or industrial establishment. Under section 1682(a)(2) of title 38, the training in business or industry must be "strictly supplemental to the institutional portion."

Under current law, benefits for cooperative training are not provided to MGIB or VEAP participants. However, cooperative courses have been a successful part of the training pursued by veterans under the Vietnam-era and prior GI Bills, permitting veterans to gain "hands-on" experience in their field of training with an employer. The practical experience phase of a cooperative program represents a valuable opportunity to apply—in the workplace—the theoretical knowledge gained in the classroom.

All witnesses at the Committee's May 25 hearing who testified on this provision supported it.

Committee bill

The Committee bill would provide for payment of cooperative training benefits to MGIB and VEAP participants after their release from active duty, with payment authorized at 80 percent of the basic full-time monthly rate otherwise payable, with entitlement charged proportionately.

The Committee believes that the program of cooperative training has been a valuable experience for the 5,282 Vietnam-era veterans who have used it and can be just a valuable for VEAP and MGIB participants.

Tolling of Delimiting Periods by Reason of Drug or Alcohol Conditions

Section 324 of the Committee bill contains an amendment proposed by Chairman Cranston and based on legislation six times previously reported by the Committee and passed by the Senate that would amend chapters 30, 31, 32, 34, and 35 of title 38 to extend the delimiting periods in the cases of certain veterans and other eligible persons who have been prevented from using their education or rehabilitation entitlements under title 38 as a result of alcohol or dug dependence or abuse conditions. The effect of the Committee bill would be, in part, to overturn the result in the case of *Traynor* v. *Turnage,* — U.S. —, 56 U.S.L.W. 4319 (1988), in which the Supreme Court upheld the VA regulations which generally preclude granting delimiting-period extensions on the basis of alcohol or drug conditions.

Background

In the GI Bill Improvement Act of 1977 (Public Law 95–202, the Congress provided for the granting of extensions of the Vietnam-era GI Bill (Chapter 34) 10-year delimiting period veterans—and of the service-connected disabled veterans dependents education program (chapter 35) 10-year delimiting period for spouses or surviving spouses—who are prevented from pursuing a program of education during the delimiting period due to a mental or physical disability not the result of willful misconduct. Under the law, the delimiting period does not run during any period of time that the veteran or eligible spouse is determined to have been unable to pursue training because of the disability.

However, there have been a number of instances in which the VA has denied a delimiting-period extension to an otherwise eligible veteran under this authority on the grounds that the condition on which the veteran based his or her claim was an alcohol or drug abuse or addiction disability, which the VA generally considers to be conditions due to willful misconduct. The VA has based its denial in these cases on the legislative history of the 1977 provision that addressed the issue of how determinations of disability should be made for the purposes of the extension. In particular, the report of the Veterans' Affairs Committee (S. Rept. No. 95-468) on the provision which was enacted as section 203(a)(1) of Public Law 95-202, in discussing the concept of "willful misconduct", stated at pages 69-70:

> In determining whether the disability sustained was a result of the veteran's own "willful misconduct", the Committee intends that the same standards be applied as are utilized in determining eligibility for other VA programs under title 38.

The report further referenced VA regulations and manual provisions relating to the determination of willful misconduct for the purposes of determining service-connected disability. Under the VA's interpretation of those standards (38 CFR section 3.301(C)(2) and (3)), alcoholism and drug addiction other than alcoholism or an addiction resulting from a psychiatric disorder, and injuries proximately and immediately resulting from the effects of the deliberate ingestion of an alcoholic beverage or voluntary use of a drug—such as an injury incurred in a traffic accident caused by the veteran's driving while under the influence of alcohol or a drug—are considered to be the result of willful misconduct.

In 1979, the Committee reexamined the practical consequences of denying a delimiting period extension in such cases and the differences between awarding such an extension on the grounds of alcohol or drug disabilities and awarding other VA benefits, such as compensation or pension, based on such disabilities. As a result of this reexamination, the Committee saw no substantial purpose to be served by denying a veteran a GI Bill delimiting-period extension when the veteran was prevented by a drug or alcohol disability, during part or all of the ordinary 10-year delimiting period, from using GI Bill educational assistance which would have considerable value to achieving and maintaining the medical, social, and economic rehabilitation of a veteran recovering from disabilities related to alcohol or drugs in addition to the educational benefit's primary purpose of assisting the veteran's readjustment to civilian life.

In contrast, the Committee noted that some undesirable consequences might flow from a similar rule being applied for purposes of other VA benefit programs, such as service-connected compensation, where eligibility for as well as the rate and duration of benefits depend directly upon the severity and duration of the disability. If an individual were to be granted disability compensation for alcoholism or drug addiction, there would be a strong financial incentive established—in the form of a higher rate of compensation or the continuation of receipt of compensation—toward the worsening or prolongation of the disability. Either of these factors are to some extent within the control of the veteran because they depend upon the amount, frequency, and duration of his or her consumption of alcoholic beverages or drugs.

Thus, the Committee reported in S. 870—and the Senate passed in section 201(2) of H.R. 5288—a provision to establish that an alcohol or drug dependence or abuse disability from which a veteran or eligible spouse has recovered shall not, solely for purposes of deciding requests for delimiting-period extensions, be considered to be the result of willful misconduct.

Similarly, in S. 1188, the bill reported by the Committee in 1980 to revise and update chapter 31, relating to VA rehabilitation programs for service-connected disabled veterans, the Senate passed on September 4, 1980, a comparable provision to provide for the tolling of a service-connected disabled veteran's delimiting period for a chapter 31 rehabilitation program on account of an alcohol or drug disability.

However, neither provision was accepted by the House.

In 1981, in connection with S. 921, the proposed "Veterans' Programs Extension and Improvement Act of 1981", the Senate again approved similar provisions, and again the House refused to accept them. In 1982, in S. 2913, the proposed "Veterans' Compensation, Education, and Employment Amendments of 1983", the Senate passed these provisions with revisions to address certain concerns expressed by the VA; again the House refused to accept the Senate provisions. Yet again, both in 1984 and in 1987, the Senate approved Committee-recommended provisions in S. 2736 and in S. 9, respectively, largely similar to those approved in 1982, and the House refused to accept them. The Committee also notes that the Supreme Court recently dealt with the question of whether the VA regulations under which alcoholism not resulting from an underlying psychiatric disorder is willful misconduct (38 CFR section 3.301 (C) (2) and (3)) violate section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which, as amended in 1978 by Public Law 95-602, generally prohibits Federal agencies from discriminating against disabled persons on basis of their handicaps. Under section 504 of the Rehabilitation Act, alcoholism is considered a handicap. On April 20, 1988, in the case of *Traynor* v. *Turnage*, —— U.S. ——, 56 U.S.L.W. 4319, the Supreme Court held, by a vote of 4-to-3, that section 504 did not invalidate that regulation. The Committee notes that subsequent to this decision, Committee member Specter introduced S. 2328, which would have reversed the effect of the court's decision.

Committee bill

The Committee believes both that the opportunity to use GI Bill and VA rehabilitation program benefits can be extremely important to the readjustment and rehabilitation of the Vietnam-era and service-connected disabled veterans involved and that the delimiting period extensions for those who were, but are no longer, prevented by alcohol or drug disabilities from using those benefits would be fully consistent with the readjustment and rehabilitation goals of both programs.

The Committee notes that in enacting major new drug and alcohol abuse legislation, the Anti-Drug Abuse Act of 1986, Public Law 99-570, Congress recognized the importance of providing individuals who have, or have recovered from drug or alcohol conditions with every reasonable opportunity to participate in programs that can help them return to full, productive lives.

Thus, section 324 of the Committee bill contains provisions—largely identical to those in S. 9 as reported by the Committee on November 6, 1987 and passed the Senate on December 4, 1987, in H.R. 2616—that would amend chapters 30, 31, 32, 34, and 35 to permit the Administrator to extend delimiting periods in the cases of veterans and eligible persons who have been prevented from using their education or rehabilitation entitlements under title 38 as a result of alcohol or drug dependence or abuse conditions.

In 1982, in view of certain concerns and objections raised by the VA about the implication of the provision insofar as disability compensation is concerned and about its ability to administer such provisions effectively, the Committee recast the provisions substantially. These provisions, which are contained in the Committee bill, are designated to reflect, even more clearly then the versions prior to 1982, the Committee's intention not to undercut, in any manner, any administrative directives or legislation provisions, relating to other benefit programs, expressly or implicitly to the effect that alcohol or drug abuse or dependence are the result of willful misconduct. Hence, the Committee bill would make clear that, for the purposes of determining eligibility for an extension of the applicable delimiting period, an alcohol or drug dependence of abuse condition would not be considered a "disability"; it would simply be considered as a "condition" that could have prevented a veteran or eligible person from pursuing a program of education or participating in a program of vocational rehabilitation.

Next, in recognition of the administrative difficulties that could arise from the enactment of the provisions, the Committee bill, unlike the pre-1982 versions, would not require that the veteran or eligible person be "recovered" from an alcohol or drug abuse or dependence condition, but rather than such a condition be under control to such as extent as to enable the individual to participate in an appropriate program. Further, it would facilitate in two ways the making of deteminations as to whether the individual had actually suffered from such a condition: (1) by requiring that he or she must have received recognized treatment or participate in a program of rehabilitation for the condition, and (2) by authorizing the Administrator to prescribe regulations specifying what specific types of treatment would be recognized for this purpose and what forms of rehabilitation programs would be qualifying. Thus, the Administrator would have the authority to make reasonable determinations as to participate in which programs—such as those offered by Alcoholics Anonymous or other treatment sources—would qualify an individual for eligibility under the tolling provisions.

Additionally, the provisions would limit the length of any extension period to the period of time equal to the length of time that the individual participated in a program of treatment or rehabilitation for the condition plus the period during which the individual was able to demonstrate to the satisfaction of the Administrator that the condition prevented pursuit of a program of education or rehabilitation. However, in no event, could the extension exceed 4 years. Thus, the Committee bill would address concerns that an individual would be able to obtain an extremely long period of tolling of the applicable delimiting period.

The Committee also notes that the amendments proposed by the Committee bill would make provision for the measurement of the extension period in a manner identical to that provided for extensions on account of disabilities under current law. That is, the delimiting period would again begin to run—after being tolled—on the first day on which the Administrator determines it is reasonably feasible for the individual to begin training.

In addition, under the amendments made by the Committee bill, the period of time for an individual to file an application under this authority for an extension of the delimiting period would be limited. Applications would be required to be filed within one year after whichever is the latest of the date on which the delimiting period would have otherwise expired, the date on which the last period of rehabilitation or treatment for the condition was terminated, or the date on which final regulations to implement the proposed extension authority are published.

In sum, the Committee stresses that it believes that it is not necessary to resolve the issue of the relationship of alcohol and drug dependence or abuse conditions to compensation for disabilities in order to make this kind of an education or rehabilitation benefit extension available. Thus, the Committee is again proposing the enactment of this provision in a form that is designed as clearly as possible to avoid this issue and hence enhance the prospects for enactment of this legislation.

Subpart 3—Administrative and Miscellaneous Provisions

Course Withdrawals

Section 331 of the Committee bill, derived from S. 2383, would, effective March 31, 1989, amend section 1780(a)(4) of title 38—which precludes the payment of VA educational assistance for a course for which the grade assigned is not used in computing the requirements for graduation, including a course from which the student withdraws, unless the Administrator finds there are mitigating circumstances—to require that mitigating circumstances be considered to exist in the first instance of a student's withdrawal from a course or courses to the extent that the withdrawal does not exceed 6 semester hours or the equivalent thereof.

Background

Under current law (section 1780(a)(4)), if a person receiving VA education benefits withdraws from a course for which the grade assigned is not used in computing the requirements for graduation, a so-called "non punitive grade," an overpayment is created (that is, the individual is charged with an indebtedness for the amount of benefits he or she received for the course retroactive to the date of enrollment. No overpayment is created if he or she demonstrates that there were mitigating circumstances responsible for the "nonpunitive" grade.

A "nonpunitive grade" is a grade assigned when a student receives no credit towards fulfillment of the requirements for completion of the course and the grade is not used in the computation of the student's measure of academic standing for purposes of determining satisfactory progress. For example, in a traditional college context, a nonpunitive grade provides no credits and is not used in computing grade point average.

A February 1987 study by the VA's Office of Program Analysis and Evaluation on the reasons for overpayments in the chapter 34 program found that 61 percent of the overpayments were due to receipt of "nonpunitive grades" and the subsequent failure of the student to demonstrate that there had been mitigating circumstances. A March 1988 VA review of overpayments in the MGIB found that 74.4 percent of overpayments under that program are due to the beneficiary's receipt of nonpunitive grades in the absence of mitigating circumstances.

Often a beneficiary pursuing an undergraduate program will test his or her academic proficiency with respect to the number or complexity of courses in which he or she enrolls and may experience substantial difficulty in gaining a satisfactory grade when too heavy an academic load has been chosen. The beneficiary's choices then are either (a) to withdraw from the course within the drop/add rules of the school and receive a nonpunitive grade—for a course the beneficiary has already paid for—and be charged by the VA with an overpayment unless mitigating circumstances are involved, or (b) not withdraw from the course and risk receiving a failing grade but retain GI bill eligibility in connection with that course. Non-VA students do not encounter the penalty involved in the former alternative.

The requirement to determine, in the case of every withdrawal, whether mitigating circumstances exist imposes an administrative and paperwork burden on the VA, schools, and VA education benefit recipients.

At the Committee's May 25 hearing, the VA's Chief Benefits Director, Mr. R. J. Vogel, expressed support for this provision as follows:

> We would like to avoid that overpayment from being created. Sometimes such overpayments—while the dollar amount might not seem to be very great—can tend in fact to drive a student right out of school. We think they ought to be given the opportunity, on a one-time shot, to drop a course and be able to continue to pursue their education without having to work out an overpayment with the Veterans' Administration.

In response to a question asking whether implementation of this provision would create any administrative burdens for VA regional offices, Mr. Vogel responded as follows:

> It would be a relatively simple matter for us to put instructions out to our field station personnel explaining how they would adjudicate such claims when there has been a withdrawal due to a student's withdrawing from a given course of instruction. It would give us the opportunity at that point in time to tell the veteran what could happen in the future to their payments should they incur some other instances of course withdrawals.

All other witnesses at the May 25 hearing who testified on this provision supported it.

The Committee notes that this proposal received uniformly favorable comments during discussions of it on January 25, 1988, by the Veterans' Education Policy Commission—established by Public Law 99-576 to review policies governing the administration of veterans' education programs.

Committee bill

The Committee bill would permit a student who is using VA education benefits a one-time opportunity to withdraw from a course or courses which are not used in computing requirements for graduation (not exceeding 6 semester hours or the equivalent) without being required to repay benefits retroactively to the beginning of the term. However, any payments which might be made to the veteran, due to delays in reporting, processing, VA administrative error, or other causes for the courses for any periods subsequent to the effective date of the reduction (i.e. the first day of the first full month following the date of the withdrawal) in the veteran's award as a result of the nonpunitive grades, would still constitute an overpayment.

The Committee notes that this provision is sufficiently restricted so as to safeguard the VA's education benefits programs from abuse by those individuals who may be interested only in receiving monthly benefits rather than an education. Individuals who show a pattern—beyond the first instance—of withdrawing from courses for which the grade assigned is not used in computing requirements for graduation would have to demonstrate that there were mitigating circumstances involved in the withdrawal or be charged with an overpayment retroactive to the beginning of the term.

This provision in the Committee bill would put veterans in basically the same position as nonveteran students and provide them with a less onerous choice when facing the dilemma of whether to withdraw from a course within the drop/add rules of the school and receive a nonpunitive grade, or not withdraw from the course and risk receiving a failing grade but retain GI bill eligibility in connection with that course.

The Committee emphasizes that this provision would have no effect on the responsibilities of the schools and veterans to notify the VA of changes in student status. In addition, the Committee intends that, in a case in which an individual who has received the benefit of this provision, the VA will notify him or her that retroactive overpayments may be created if non-punitive grades are assigned in the future.

Funding of Educational and Vocational Counseling Services

Section 332 of the Committee bill would, effective October 1, 1988, amend subchapter II of chapter 36 of title 38 to add a new section 1797 requiring that contracts for educational and vocational counseling services provided to individuals applying for or receiving benefits under the following programs be funded under the readjustment benefits account up to a total amount not to exceed $5 million in any fiscal year: the MGIB, VEAP, the Vietnam-era GI Bill, the survivors' and dependents educational assistance, and the temporary program of vocational training under section 524 of title 38 for non-service-disabled veterans newly awarded needs-based VA pension under chapter 15.

Background

Currently, educational and vocational counseling services are provided through (a) VA counseling psychologists (CPs), and (b) contractual arrangements under very limited funding available through the VA's General Operating Expenses (GOE) account. Reliance on CPs to provide these services to non-disabled veterans has had an adverse effect on the provision of similar services to service-connected disabled veterans under the chapter 31 vocational rehabilitation program, as evidenced by an at least 90-day wait for an initial evaluation during FY 1987.

An increase in the use of contract counseling services to provide educational and vocational services to veterans in programs other than chapter 31 could help ensure timely and appropriate quality of services under those other programs without detracting from the services to service-connected-disabled veterans who apply for services under chapter 31. However, funding under the GOE account is so limited that it is unrealistic to expect the VA to increase its use of contract counseling paid for under that account.

Committee bill

The Committee bill would require that, subject to a $5-million-per-year limitation, VA contracts for the educational and vocational counseling services provided to individuals applying for or receiving benefits under section 524 or any VA-administered program of educational assistance be paid for out of the VA's Readjustment Benefits appropriations account. The Committee believes that this approach will allow CPs to focus more exclusively on providing timely counseling services to disabled veterans under the chapter 31 program of vocational rehabilitation.

In light of the findings in the VA Inspector General's March 21, 1988, report entitled "Audit of VA Vocational Rehabilitation Program"—which raised significant questions as to whether the program was effectively and economically accomplishing its intended purpose of rehabilitating service-connected-disabled veterans—the Committee urges the VA to take the following steps: (a) review its administration of the chapter 31 program with respect to military retirees and take steps to ensure that retirees who participate in chapter 31 truly are in need of such services for purposes of realistic future vocational endeavors; (b) promptly and effectively implement the administrative recommendations of the subject VA Inspector General report; and (c) review its definition of "rehabilitation" so as to follow the VA to take some measure of credit when a veteran (1) becomes employed in a field related to that in which he or she trained at a salary somewhat less than he or she would have been hired in his or her primary field, and (2) becomes employed at such somewhat lesser salary in an unrelated field but in one which is consistent with the veteran's disability.

Measurement of Full-Time Study

Section 333 of the Committee bill, which is derived from section 201 of S. 2307, an Administration proposal, would amend section 1788(e) to modify, for purposes of determining whether a student receiving VA-administered educational assistance is engaged in fulltime study, the criteria for measuring a non-college-degree course which is offered by an institution of higher learning and for which the institution requires one or more unit courses or subjects creditable toward a college degree. Under the Committee bill, the credit hours awarded for that non-degree course would be converted to equivalent clock hours and combined with the number of clock hours concurrently pursued, if any, to determine training time under section 1788(a)(1) or (2), which provides for the measurement of trade or technical courses which are offered on a clock-hour basis and do not lead to a standard college degree.

Background

Section 1788(e) currently sets forth a method for determining full-time pursuit of a course not leading to a standard college degree which is offered by an institution of higher learning and for which the institution requires one or more unit courses or subjects creditable toward a standard college degree. This method provides for reducing the number of clock hours otherwise required for full-time study under section 1788(a)(1)or (2) by the percentage which the number of credit hours (represented by such unit courses or subjects) being pursued is of the number of credits required in order for the student to be paid at the full-time rate under section 1788(a)(4).

Committee bill

The method proposed in the Committee bill, unlike the existing complex prodcedures of section 1788(e), which necessitate creation of an artificial measurement scale in each case, simply converts credit hours to equivalent clock hours, thus enabling measurement of college degree courses in the same until expressed in section 1788(a)(1) and (2).

The Committee notes that the measurement criteria under current law require a far greater number of calculations than would be necessary under this provision of the Committee bill. Thus, this provision should simplify such measurement determinations and yield more readily understandable and consistent results.

Educational Assistance for Certain Incarcerated Veterans Under The Post-Vietnam Era Veterans' Educational Assistance Program

Section 334 of the Committee bill, which is derived from section 106 of S. 2307, an Administration proposal, would amend section 1631 of title 38 so as to limit the amount of educational assistance payable to a VEAP participant who is serving a sentence in a Federal, State, or local penal institution for conviction of a felony to the same level of benefits payable to participants in other VA-administered educational assistance programs who are so incarcerated—the lesser of the allowance otherwise payable or the established charges for tuition, fees, and necessary books, supplies and equipment, with that amount reduced to the extent tuition and fees are paid under other, non-VA governmental programs.

Background

Under current law (sections 1434(a), 1508(g)(1), and 1682(g)) benefits payments to incarcerated veterans are reduced or eliminated under the MGIB, vocational rehabilitation, and Vietnam-Era GI Bill programs. No such provision, however, applies to incarcerated veterans eligible for VEAP benefits. The statutory payment limitations for incarcerated veterans were enacted in response to the problem, as noted by prison officials, that the availability to incarcerated veterans of substantial sums of money from their educational assistance allowances causes disruption in prisons.

The majority of witnesses at the May 25 hearing who testified on this provision supported it.

Committee bill

The Committee bill would eliminate or reduce benefit payments to incarcerated veterans under the chapter 32 program in accordance with the principles applicable to incarcerated veterans under other VA programs of educational assistance. The Committee believes that the considerations, set forth above, which led to enactment of restrictions in those other programs should apply to VEAP participants as well as to any others.

Veterans' Advisory Committee on Education

Section 335 of the Committee bill, derived in part from section 202 of S. 2307, an Administration proposal, would amend section 1792(c) of title 38 to extend the existence of the Veterans' Advisory Committee on Education (VACE) for four years, to December 31, 1993, and add to its membership the Chairman of the Commission on Veterans' Education Policy (CVEP), established under section 320 of Public Law 99-576.

Background

Under current law (section 1792(c)), the VACE, from which the administrator is required to seek the advice of with respect to the administration of veterans' educational assistance programs and which may submit reports and recommendations to the Administrator and the Committees on Veterans' Affairs, will remain in existence until December 31, 1989. Since the enactment of that section in Public Law 89-358 as amended by Public Law 96-466, several legislative amendments to VA educational assistance programs have occurred, including legislation enacted in June, 1987 (Public Law 100-48) making the MGIB a permanent program.

The CVEP is a Congressionally-mandated independent 11-member Commission which is required to submit to the Administrator and the Veterans' Affairs Committees of the House and Senate findings, views, and recommendations on a broad range of matters relating to the administration of VA-administered educational and rehabilitation programs. The CVEP's first report is due on August 29, 1988, and, under the terms of Public law 9-576, is scheduled to terminate three and one-half years thereafter.

All the witnesses at the Committee's May 25 hearing who testified on this provision supported it.

Committee bill

The Committee bill would extend the existence of the Veterans' Advisory Committee on Education to December 31, 1993, and add to its membership the Chairman of the CVEP.

In view of the permanence of the MGIB program, the Committee believes that it is important that the Advisory Committee continue to function in order that it may advise the Administrator on matters pertaining to veterans' education benefits under that program.

As introduced in S. 2307, this provision did not include the addition of the Chairman of the CVEP. The Committee believes the Chairman can be an asset to the Veterans' Advisory Committee on Education by providing continuity between the report on the CVEP's findings, its recommendations assessing veterans' education policy—due on August 29, 1988—and the implementation of such recommendations. Further, the Committee believes the CVEP's recommendations should be closely coordinated with the Veterans' Advisory Committee on Education and that the presence of the CVEP Chairman on the Advisory Committee can facilitate this coordination.

Vietnam-Era GI Bill Eligibility for Certain Service Academy Graduates

Section 336 of the Committee bill, derived from section 2 of S. 2383, would amend section 1652(a) of title 38 to make eligible for Vietnam-era GI Bill (chapter 34) benefits those individuals who (a) before January 1, 1977, commenced their third academic year as cadets or midshipmen at one of the service academies or as members of the Senior Reserve Officer Training Corps (SROTC) under section 2104 or 2107 of title 10, (b) served on active duty for more than 180 days after graduation, (c) if separated from active duty, were discharged or released under conditions other than dishonorable, and (d) enrolled in VEAP, which was closed to new enrollments on July 1, 1985.

Background

The October 1976 legislation establishing VEAP under chapter 32 of title 38—Public Law 94-502—generally provided eligibility for VEAP to those entering active-duty service on or after January 1, 1977. Under VEAP, participants were required to make contributions to an education benefits account during their active duty in order to participate in the program. That legislation also generally closed the non-contributory Vietnam-era GI Bill, chapter 34—which generally provided greater benefits—to those entering active duty after December 31, 1976.

In light of the commitments made by persons involved in the delayed-entry program, Congress made an exception preserving chapter 34 eligibility for those who entered active duty after December 31, 1976, if they had previously contracted with the Armed Forces to enter on active duty and were enlisted in or assigned to a reserve component before January 1, 1977, and entered active duty within 12 months after that date.

SROTC participants who graduated from college in 1977 and entered active duty by December 31, 1977, met these requirements for Vietnam-era GI Bill eligibility. However, service academy graduates in the class of 1977, who at the end of their second year in 1975 had entered into contracts committing them to enter on active duty, did not meet the requirements of this exception—because they had not enlisted in or been assigned to a reserve component before January 1, 1977. Likewise, 1978 SROTC and service academy graduates, who in 1976 entered into contracts committing themselves to enter active duty, did not receive chapter 34 eligibility—in the case of 1978 SROTC graduates because they did not enter upon active duty before January 1, 1978, and in the case of the service academy graduates, both for that reason and because they had not enlisted in or been assigned to a reserve component before that date.

Committee bill

Under the Committee bill, those persons who meet the conditions outlined in the bill and before January 1, 1990, file with the VA an irrevocable election to receive chapter 34 eligibility rather than VEAP would become eligible for chapter 34 benefits. If enrolled in VEAP at the time of the election they would be disenrolled from VEAP and ineligible thereafter to participate in VEAP. Any amount that the veteran contributed to the Post-Vietnam Era Veterans' Education Account which had not been paid to the individual would be refunded within 60 days after the VA's receipt of application for the refund. If the individual had received educational benefits under VEAP, he or she would also be paid the amount of educational assistance the individual would have received under chapter 34 for the courses involved less the amount of educational assistance which the individual received under chapter 32 for those courses.

The Committee believes these provisions will provide a measure of equity for these service academy and SROTC graduates who (a) before January 1, 1977, commenced their third academic year as cadets or midshipmen at one of the service academies or as members of the Senior Reserve Officer Training Corps (SROTC) under section 2104 or 2107 of title 10, and thereby incurred an obligation to enter on active duty subsequent to December 31, 1976, (b) served on active duty for more than 180 days after graduation, (c) if separated from active duty, were discharged or released under conditions other than dishonorable, and (d) enrolled in VEAP, which was closed to new enrollments on July 1, 1985, and who—by their participation in VEAP—demonstrated an interest in earning education benefits during their service.

Repeal of Expired Programs of Accelerated-Payment Loans

Section 337 of the Committee bill, which is derived from section 201(b), (c), (e), and (f) of S. 918, an Administration proposal, and incorporated into S. 9 passed by the Senate on December 4, 1987, would amend sections 1682A, 1737, 1738, and 1798 of title 38 to repeal the VA's expired authorities to make (a) accelerated payments of chapter 34 and chapter 35 educational assistance allowances in the form of education loans that are cancelled upon the veteran's satisfactory completion of his or her program of education, and (b) education loans to persons other than certain chapter 34 participants receiving loans in order to continue full-time pursuit of their educations after the expiration of their delimiting periods.

Section 337 of the Committee bill, which is derived from section 201 of S. 918, an Administration proposal, and was incorporated into S. 9 as reported by the Committee and passed by the Senate in H.R. 2616 on December 4, 1987, with drafting changes, would repeal sections 1682A, 1737, and 1738, and make conforming amendments in section 1798, of title 38 in order to repeal the VA's expired authorities to make (a) accelerated payments of chapter 34 and chapter 35 educational assistance allowances in the form of education loans that are cancelled upon the veteran's satisfactory completion of his or her program of education, and (b) education loans to persons other than certain chapter 34 participants receiving loans in order to continue full-time pursuit of their educations after the expiration of their delimiting periods. In addition, section 201 of S. 918 and section 337 of the Committee bill would repeal section 1686 of title 38 because it is a redundant provision.

Background

Provisions of sections 1682A and 1737 provided the VA with the authority to make accelerated payments of educational assistance under chapters 34 and 35, contingent upon the veteran's or eligible person's State establishing, prior to November 24, 1982, a program to pay the VA Education Loan Fund amounts matching the amount of accelerated VA payments to the veteran. Only one State authorized such a program, and no State funds were ever appropriated to implement this program. Thus, the accelerated program was not utilized and has expired.

In addition, in section 2005 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), Congress generally terminated the program of education loans for chapters 34 and 35 participants as of September 30, 1981.

A similar provision was passed by the Senate in S. 9 on December 4, 1987, but was later dropped because of drafting issues.

Committee bill

The Committee bill would repeal the provisions under which these expired programs operated and would repeal section 1686 which, as noted above, is considered a redundancy.

Part C—Non-Service-Connected Disability Pension Recipient's Vocational Training Program

Extension of Program Period

Section 341 of the Committee bill, which is derived from S. 2459, would amend section 524 of title 38 to extend for one year the temporary programs of vocational training for certain veterans who are awarded a pension and for one year the three-year period of protection of veteran-pensioners' VA health-care eligibility if they lose pension entitlement as a result of work income.

Background

The temporary programs of vocational training and health-care eligibility protection for certain new pension recipients were established by the Congress in sections 524 and 525 of title 38 by section 301(a) of Public Law 98-543 in 1984. Under section 524, a needy wartime veteran who receives an award of non-service-connected-disability pension on the basis of actual permanent and total disability—as distinguished from presumptive disability based on being 65 years of age or older—and for whom a vocational goal is determined to be feasible is entitled to be provided with a vocational training program consisting of such services and assistance as are necessary, within certain limitations, to enable the veteran to prepare for, gain, and maintain employment. Under section 525, Congress established temporary protection of health-care eligibility under which a veteran, whose entitlement to pension is terminated during the program period by reason of income from work or training, retains for a period of three years beginning on the date of the termination, the eligibility for VA health-care services that the veteran would have had if the veteran's entitlement to pension had not been terminated.

A significant proportion of the veterans evaluated under this program as to whether achieving a vocational goal is feasible for them are determined to have the potential to pursue a vocational goal despite their seriously disabling conditions. During the first three years of the programs, 6,655 veterans have been evaluated and for 2,045 the achievement of a vocational goal was found to be reasonably feasible. Of these 2,045 veterans, 470 have pursued or are pursuing a vocational training program.

This program is scheduled to terminate on January 31, 1989.

Committee bill

The Committee bill would extend for one year, from January 31, 1989, until January 31, 1990, the temporary programs of vocational training and health-care eligibility protection. The Committee notes that the extension of these programs is limited to one year because the Committee has not yet received the VA's report on the implementation of sections 524 and 525 for the period from February 1, 1985, through January 31, 1988, which was due on April 15, 1988.

TITLE IV—MISCELLANEOUS BENEFITS PROVISIONS

Part A—Insurance Programs

Payment of Interest on Settlements

Section 401 of the Committee bill, which is derived from sections 101 and 102 of S. 2464, an Administration proposal, would amend subchapters I and II of chapter 19 of title 38 so as to add two new sections which would authorize the VA to pay interest on insurance settlements from the date a policy matures to the date of payment of the proceeds. This authority would apply to VA-administered programs of National Service Life Insurance (NSLI), Veterans' Special Life Insurance (VSLI), Veterans Reopened Insurance (VRI), and United States Government Life Insurance (USGLI), and would be available only if the Administrator has determined that the payment of interest is actuarially sound for the settlement option involved. Interest would be paid at the same rates as those established for dividends held on credit or deposit in the policy holders' accounts.

Background

The operation of the USGLI, NSLI, VSLI, and VRI programs are similar to those of a mutual insurance company in that the assets derived from premium income and interest earnings are held in trust for the benefit of the policyholders and their beneficiaries. Separate trust funds have been established for each program and the reserves are invested in U.S. Treasury securities. The programs are participatory in nature, so that any surplus resulting from mortality savings or excess interest earnings is distributed to policy holders in the form of dividends.

Under current law, settlement proceeds are invested primarily in U.S. Treasury securities between the time the life insurance proceeds become payable and the time the actual payment is made, and any interest earned goes to the policy holders in the form of dividends.

As noted by the VA in its May 26, 1988, letter transmitting proposed legislation to the President of the Senate:

> Although claims are generally paid within 10 days from the date of receipt in the VA, in some cases, a significant period of time elapses between the date when life insurance proceeds become payable and the date when the actual payment is made. There can be substantial delays associated with receipt of notice of death, the development of cases involving payments to estates or contested claims, appeals to the Board of Veterans Appeals, or litigation in the courts.

Such delays temporarily deny the use of proceeds by those entitled to them and provide the remaining policy holders with a windfall. At the June 16, 1988 hearing, all witnesses who testified on this subject supported sections 101 and 102 of S. 2464.

Committee bill

The Committee bill would authorize the VA to pay interest on settlement proceeds in a manner consistent with standard practices in the commercial life insurance industry. As previously noted, the interest rate would be the same as that established for dividends held on credit or deposit in the policy holder's account. These rates are adjusted annually and are currently set at 9.25 percent for NSLI, 9.25 percent for VSLI, 9.75 percent for VRI, and 7 percent for USGLI.

The Committee agrees with the VA that, as a matter of equity, interest earned on settlement proceeds should be distributed, as provided in the Committee bill, to the beneficiaries in a death case and to the policyholder in a matured-endowment case.

Adjustment of Discount Rates for Advance Payment of Premiums

Section 402 of the Committee bill, which is derived from section 201 of S. 2464, an Administration proposal, would amend subchapter I of chapter 19 of title 38 to add a new section which would authorize the VA administratively to adjust upward the discount rates for premiums paid in advance on NSLI, VSLI, and VRI policies. Under this provision, the rates could not be set below those currently specified by statute, that is, 3 percent for NSLI, 2.5 percent for VSLI, and 3.5 percent for VRI, and adjustments could be made only if the Administrator determines that they are administratively and actuarially sound.

Background

At present, all premiums, including those paid in advance, under these three VA insurance programs become assets of the insurance trust funds after receipt by the VA. These funds are primarily invested in U.S. Treasury securities, which are currently producing an average yield of approximately 9.6 percent. The difference between the discount rate and the average trust fund yield generates excess earnings, which are currently paid to the policyholders (including those who do not pay advance premiums) through dividend distributions. Thus, all policyholders benefit from the interest income produced by those who have paid in advance.

Committee bill

The Committee bill would provide for a larger discount than is currently permitted to policyholders who pay premiums in advance. As noted by the VA in its May 26, 1988, letter transmitting the draft legislation, this policy "should encourage some policyholders who now pay their premiums on a monthly basis to switch to a quarterly basis, semi-annual or annual basis, with attendant administrative savings for the Government."

The VA also stated in that transmittal letter that it would initially increase the discount to 7.5 percent and that future adjustments to the discount rate would be made according to the trust fund earning experience. The Committee approves of the VA's plan and agrees with the VA that adjusting the discount rate in this manner would treat policyholders paying their premiums in advance more equitably.

Part B—State Cemetery Construction Grant Program

Extension of Authorization of Appropriations

Section 411 of the Committee bill, which is derived from section 203 of S. 2268, an Administration proposal, would amend section 1008 of title 38 to extend for five years, through fiscal year 1994, the authorization of appropriations ("of such funds as may be necessary") for construction grants for state cemeteries.

Background

In 1978, Congress enacted a program of matching grants for the construction of State veterans' cemeteries. Since then, a total of $31,339,000 have been appropriated (including $9 million provided for FY 1989 in the appropriation act, H.R. 4800, passed by both Houses). Currently, under section 1008 of title 38, the VA is authorized to make matching grants to 50 percent of the cost, to a State for establishing, expanding, or improving a State veterans' cemetery. This authority will lapse at the end of fiscal year 1989.

As noted by the VA in its April 1, 1988, letter transmitting the draft measure to the President of the Senate, thus far under this program, "18 States have submitted 38 applications for assistance in acquiring land for or improving facilities at 27 cemeteries, and an additional 30 States have expressed interest in the program or an intent to file for Federal assistance. Through FY 1987, 25 grants have been made, for a total of $10.4 million and providing approximately 100,000 interment spaces.

All witnesses who testified at the June 16, 1988, hearing supported section 203 of S. 2268.

Committee bill

The Committee believes that this program allows the States and the Federal government to share approximately in meeting the burial needs of veterans. Thus, the Committee bill would extend the authorization of appropriations for the program through fiscal year 1994, in order to permit additional participation by the States.

Part C—Home Loan Guaranty Program

Waiver of Indebtedness

Section 421 of the Committee bill, which is derived from section 7(a) of S. 2419, an Administration proposal, would amend section 3102(b) of title 38, relating to eligibility for waiver of VA home loan debts, to clarify that the waiver is available to active-duty service personnel.

Background

Section 3102(b) of title 38 authorizes the Administrator to waive the payment of an indebtedness to the VA by a veteran or veteran's spouse as a result of a default on a home loan guaranteed, insured, or made by the VA if the Administrator determines that collection of the debt "would be against equity and good conscience". However, although certain active-duty service personnel are eligible for VA home loan program benefits on the same basis as veterans, active-duty service personnel and their spouses are not included in the scope of this waiver provision.

At the Committee's June 16 hearing, the VA testified in support of this provision and there was no opposition to it (although the Disabled American Veterans expressed their opposition to S. 2419 as a whole).

Committee bill

Section 421 of the Committee bill would authorize the Administrator to waive payment of the home loan debts of any individual—including active-duty service personnel—(or the spouse of any individual) eligible for chapter 37 benefits, as provided for in section 1802(a) of title 38. The Committee agrees with the VA that there is no basis for excluding any category of persons who are eligible for VA home loan benefits from the waiver provision.

TITLE V—BOARD OF VETERANS' APPEALS

Background

This title contains provisions to make various improvements to the operations of the Board of Veterans' Appeals (BVA), which currently serves as the veterans' last resort on a claim for benefits. Over the years since 1977 during which the Committee has actively considered judicial review legislation such as S. 11, which the Committee ordered reported on June 29 and the Senate passed on July 11 to provide for judicial review of VA regulations and individual benefit determinations in the U.S. Courts of Appeals, those who have opposed such measures have asserted that if the VA system of adjudication, including the BVA, is not broken, then there is no need to fix it. It has become apparent, however, especially as a result of the Committee's June 9 hearing, that the operations of the BVA, while not broken, are in need of some fixing. The Committee has frequently expressed the belief that although the BVA's operations and judicial review are interrelated, each is not dependent upon the other. Accordingly, although the provisions in this title of the Committee bill are also included in S. 11, the Committee believes the provisions of this title should be enacted, regardless of the outcome on S. 11, in order to improve the operations of the BVA, make the BVA more independent, and ensure more fairness for VA claimants.

Witnesses at the Committee's June 9 hearing expressed support for giving the BVA greater independence from the Administrator in order to ensure a fair hearing for the veteran and an impartial determination based on the merits of the case. Accordingly, the Committee has determined that a number of changes in the current structure of the BVA are warranted.

Further background and discussion of these provisions appears in the Committee report on S. 11 relating to title I of that bill (Senate Report No. 100-418 at pages 40-47).

Committee bill

Independence of the Chairman.—In a claim for benefits appealed to the BVA, even with the VA's non-adversarial atmosphere tradition and with the benefit of the doubt being given to the veteran claimant, the Administrator, as head of the VA, is, in effect, a party to the action being brought by the veteran and as such should not, the Committee believes, be called upon to make judgments about or issue regulations or guidelines governing BVA proceedings. Accordingly, the Committee has included section 501 in the Committee bill, which is derived from section 103 of S. 11 as passed by the Senate, to amend section 4001(a) of title 38, pertaining to the composition of the Board, to delete language which made the Chairman "directly responsible to the Administrator". The Committee believes this change would decrease the Administrator's control over the adjudicatory process at the BVA except for the substanative VA policies, interpretations, and regulations applied by the Board.

Timeliness of Dispositions.—Section 502 of the Committee bill, which is derived from section 103 of S. 11 as passed, would add language requiring that the Board should dispose of appeals properly before it in a "timely manner". Although the Committee believes that the BVA currently strives to operate efficiently, the Committee believes that a timely decision is at the core of a fair and just determination, and, therefore, has added language to make it a statutory requirement.

Appointment and Removal of the Chairman and Members.—Currently, the BVA is composed of a Chairman, a Vice-Chairman, two Deputy Vice-Chairmen, and up to 63 other members, along with 430 staff. The Chairman, the Vice-Chairman, and the members are appointed by the Administrator with the "approval of the President." There are no terms of office and no express provisions for removal from office.

In an attempt to make the Chairman more independent, and yet still maintain a check on the Chairman's power and ensure accountability, the Committee bill would alter the current situation significantly. Section 503 of the Committee bill, in a provision derived from section 103 of S. 11 as passed and S. 2292, would amend current law so as to provide that the BVA Chairman would be appointed by the President, by and with the advice and consent of the Senate, for a term of five years. A particular individual would be allowed to serve no more than three full terms as Chairman. Appointment of the first Chairman under the bill would have to occur within one year after the date of the enactment of this provision, and the serving Chairman, whom the President would be free to nominate, would be allowed to continue during that period. If the serving Chairman were nominated and confirmed, none of the time served as Chairman prior to that appointment would count in calculating the terms he or she could serve.

To separate the BVA from the VA as much as possible, and thereby create more independence for the entire Board, the Committee bill would change the manner of appointment and removal of BVA members. Under the Committee bill, in a provision derived from S. 11 as passed and S. 2292, Board members would be required to be appointed by the Chairman, rather than by the Administrator with "the approval of the President" as now required, and be appointed for nine-year terms. In order to provide for a phase-in period, 21 members would initially be appointed for three-year terms, 22 for six-year terms, and 22 for nine-year terms. The

Vice-Chairman would be designated by the Chairman from among those appointed for six-year or nine-year terms, and would serve as Vice-Chairman at the pleasure of the Chairman. The Vice-Chairman would perform those functions designated by the Chairman and serve as the Acting Chairman during any absence or disability of the Chairman or in the event of a vacancy in the office of the Chairman.

No appointments under this provision could be made until a Presidentially-appointed Chairman was confirmed. Once confirmed, the Chairman would have 180 days in which to make the 66 appointments. Under the changes in the Committee bill, a Board member could be removed only upon a showing of good cause alleged by the Chairman and found by the Merit Systems Protection Board under section 7521(a) of title 5 and would be afforded procedural rights, including a hearing, under section 7513(b) of title 5. This is the same procedure generally designated for use to remove an administrative law judge in the Federal Government. There would be no limit on the number of reappointments that a Board member could receive. In the case of a vacancy, a new member would be appointed to complete the remainder of the term.

Although there is a concern that granting the Chairman the right to appoint Board members could create an opportunity for abuse of that power, the Committee believes that the scheme of appointments provides a sufficient check on the Chairman's conduct by requiring the Chairman's reappointment and confirmation every five years. Additionally, the Committee expects that the President would choose, and the Senate would confirm, only an individual of such integrity, honor, and sound judgment that the issue of abuse of power in selecting Board members would not arise.

Salary of Chairman.—Section 504 of the Committee bill, which is section 103(b) of S. 11 as passed, would specify that the Chairman, as befitting his or her enhanced responsibilities and accountability, would be paid at Executive Level IV (currently $74,500 as compared to the Chairman's current salary of $72,500) and be removed only upon good cause found by the President.

Reports on Board Activities and Resources.—Section 505 of the Committee bill, which is derived from section 103(c) of S. 11 as passed, would require the Chairman to report to the Congress annually on the Board's record of success in achieving the goal of disposing of appeals in a timely manner, together with an evaluation, for the coming fiscal year, of the Board's ability to so dispose of claims. This reporting requirement should afford the Committee the opportunity to monitor closely the Board's ability to handle its caseload, and, if necessary, to take appropriate action.

Prohibition of Bonuses for Members.—Until very recently, the BVA, through an Awards committee composed of the Chairman, Vice-Chairman, two Deputy Vice-Chairmen, and three executive assistants, granted cash bonuses to certain Board Members who were eligible for such awards because they had exceeded a production quota of 40 cases per week. These awards were based, first, on exceeding the production quota and, second, on the quality of the decisions, in terms of writing and format but purportedly not in terms of the judgment exercised by the Member. Concerns were raised at the June 9 hearing that the BVA bonuses were improper, especially in light of Executive branch exemptions which specifically excluded Board members from the Performance Appraisal System, used to evaluate Federal employees, and from the Merit Pay System, prescribed under chapter 54 of title 5, in order to avoid any appearance of the Members being influenced by performance evaluations and merit pay. (The Executive Branch documents making these exceptions are included in the Appendix to the Committee's report on S. 11, Senate Report 100-418).

Witnesses at the hearing generally agreed that the appearance of impropriety was enough to warrant the elimination of the use of bonuses. At the June 9 hearing, BVA Chairman Kenneth Eaton announced that cash bonuses for BVA Members would be discontinued but that the Board was looking for some other method of rewarding and encouraging outstanding performance by Board members.

Section 506 of the Committee bill, which is derived from section 103(3) of the S. 11 and S. 2292, would establish a permanent statutory prohibition against members of the Board, including those serving as temporary members, receiving, either directly or indirectly, bonuses (in addition to salary) relating to their service on the Board.

Voting by the Board.—One of the fundamental principles in the adjudication of a claim for VA benefits, as set forth in VA regulations (38 C.F.R. 3.102), is that in all matters where there is an approximate balance of positive and negative evidence regarding the merits of an issue, the benefit of the doubt in resolving such an issue is to be given to the claimant. Under current law, a final decision of the BVA requires all three BVA Members on a Board Section to agree on either a denial or an allowance. The Committee believes that this practice, in the case of granting a benefit, is inconsistent with the principle of according the benefit of the doubt to a claimant. Accordingly, section 507 of the Committee bill, which is derived from section 104 of S. 11, would amend section 4003 of title 38 so as to define a final BVA decision as to a 2-1 vote in favor of an allowance, while continuing to require a unanimous decision for a denial. Thus, a 2-1 decision for the veteran would result in an award to the veteran rather than, as now, requiring the Chairman to vote with the majority or appoint an expanded panel.

An additional change in the Committee bill in the area of voting would be to specify that in a case where, without the vote of a temporary member (designated under section 4001(c)(1) of title 38) or an acting member (designated under section 4002(a)(2)(A)(ii)), the panel would be evenly divided, then such member would not be permitted to cast a vote. Instead, upon a tie vote of the two permanent members of the Board, the Chairman would be required to expand the panel, by not less than two members, to reach a determination. This provision would have the effect of keeping a temporary or acting member from having a determinative influence on the outcome of a claim for VA benefits.

Reopening of Disallowed Claims.—Section 509 of the Committee bill, which is identical to section 105(2) of S. 11, would amend section 4004(b) of title 38, the section of current law that relates to the

Board's authority to authorize the reopening of a previously disallowed claim, so as to remove a requirement that the "new and material evidence" sufficient to authorize a reopening be in the form of "official reports from the proper service department". Current Board practice is to authorize such a reopening when "new and material evidence" is received from any source. This provision would further amend section 4004(b) so as to make a reopening by the Board mandatory rather than discretionary when new and material evidence is presented, and to permit a reopening, on a discretionary basis, upon a showing of good cause.

Notice and Content of Decisions.—Section 510 of the Committee bill, which is identical to section 105(3) of S. 11, would amend section 4004 of title 38 so as to require that the BVA promptly mail notice of its decision to a claimant and the claimant's authorized representative—thus codifying an existing practice of the BVA—in order to ensure that a claimant is informed of the decision and the reasoning behind it. The notice would be required to include the Board's findings and conclusions, and reasons or bases therefor, on all material issues of fact and law and on matters of discretion presented on the record.

Prohibition Against Presumption of Agreements.—Section 511 of the Committee bill, which is derived from section 106(1) of S. 11, would amend present section 4005(d) of title 38 so as to codify current BVA practice, as testified to by the BVA Chairman at the Committee's June 9 hearing, under which a claimant taking an appeal to the BVA is presumed to disagree with the contentions of law and fact made in the Statement of the Case unless the claimant specifically expresses agreement. Currently, section 4005(d) presumes no disagreement with any statement of fact made in the Statement of the Case to which no exception is taken. Some witnesses at the June 9 hearing expressed a concern that a claimant's failure under current law to enunciate a clear disagreement with each contention in the Statement of the Case could result in the issues involved not being considered by the BVA.

Medical Opinions.—As a result of the Committee's oversight activities and witnesses' responses to questions at the oversight hearing, it became evident that Board members and BVA staff attorneys not infrequently seek the medical opinion of BVA Member physicians not serving on the panel deciding the particular case. It appears, however, that it is unusual for a final BVA decision to reflect that such a Member physician's opinion has been taken into consideration when rendering the decision. The Committee believes that, although the utilization of a particular Member physician's expertise may be appropriate on occasion, especially in cases involving very specialized medical areas, such consultation on an ex parte basis without informing the claimant of the existence and content of such an opinion and allowing a response to that opinion deprives the claimant of a basic due process right.

Accordingly, section 512 of the Committee bill, which is identical to section 107 of S. 11, would amend section 4009 of title 38 so as to provide that if a BVA Member or employee consults with a physician not on the panel considering the case, the claimant would have to be given notice of that consultation along with a copy of any opinion rendered by such a physician and then be allowed 60 days in which to respond to the opinion. The information gained through this process would be required to be included in the discussion of evidence in the final decision. This same requirement would apply to use of independent medical expert's opinions (IME), which are sought by the Board, under the authority of section 4009 of title 38, in cases in which there is a complex medical issue. These opinions are sought through the offices of the Department of Medicine and Surgery from physicians usually affiliated with medical schools outside of the VA system. The Chief Member on a Board Section may initiate a request for an IME or a claimant or his or her representative may request one. Not all requests are granted.

BVA Chairman Eaton testified at the Committee's June 9 hearing that when a claimant's request for an IME is denied by the Chief Member of a Board Section, the claimant has a right to appeal that decision to the Chairman. It is the Committee's understanding that such a right is not one that is well-known, and that, to this point, the BVA has made no effort to alert claimants to it. Section 512 would address this issue by requiring that each claimant and authorized representative receive notification of the right to appeal a denial of a request for an IME opinion by being issued a statement setting forth the basis of the denial and the right to appeal.

The Committee believes that it is vital that the physician Board Members remain familiar with the ever-changing field of medicine in order to ensure that their medical opinions are accurate and up-to-date. To this end, the Committee strongly urges the BVA to place a higher emphasis on continuing education for its physicians. Additionally, it is the Committee's intent that the BVA, to the maximum extent feasible, assign physician Members with a particular specially to cases involving that specialty, especially in cases of reconsideration or panel expansion.

Adjudication Procedures.—Section 513 of the Committee bill, which is derived from section 108 of S. 11, is designed to codify VA procedural protections while maintaining the informality that presently characterizes VA procedures. It would amend title 38 by adding section 4010.

Among the procedures in section 513 that are intended to codify existing procedures are those that would: (1) authorize the Administrator to administer oaths and affirmations, examine witnesses, and receive evidence; (2) provide for the admission of any evidence in Va proceedings, even if such evidence were inadmissible under the rules of evidence applicable to judicial proceedings, subject only to exclusions, if the Administrator and Chairman jointly provide by regulation therefore, for irrelevant, immaterial, or unduly repetitious evidence; (3) permit a claimant (or claimant's representative) to examine all of the materials to be considered in the proceeding and—on the payment of a fee, which may be waived in specified circumstances, including the claimant's inability to pay—to receive a copy of any or all such materials, (4) provide authority for a hearing officer to disqualify himself or herself on the basis of personal bias or other cause and permit a claimant to challenge a hearing or adjudication officer on such basis; (5) define the contents of the administrative record following Board determination and permit a claimant (or a claimant's representative)—on the payment of a fee, which may be waived in specified circumstances, including the claimant's inability to pay—to receive a copy of the materials constituting the record; and (6) specify that the adjudication and hearing procedures prescribed in title 38 and in regulations of the Administrator, as to proceedings other than before the Board, or the Chairman of the Board, as to proceedings before the Board, or by the Administrator and Chairman jointly, are exclusive.

This last provision is included to reaffirm the Committee's belief that the existing internal adjudications procedures of the VA are generally fair and workable and to preclude, therefore, judicial incorporation of other procedures beyond those codified in title 38 or provided by regulations in accordance with such statutory authority.

Section 513 of the Committee bill also contains provisions relating to the use by the BVA of traveling Board Sections. One of the drawbacks to the BVA being situated in one location—in Washington, DC—is the lack of ability on the part of many veterans to attend personal hearings before the Board. BVA statistics show that allowances are statistically far more frequent after personal appearances before the Board in Washington (19.5% in FY 87) and after appearances before a traveling Section (30.6% in FY 87).

In a general effort to permit an opportunity for more personalized appearances to those who are unable to travel to Washington, D.C., the BVA utilizes two alternative methods. Under the first, the BVA authorizes VA Regional Office adjudication personnel to act as agents for the BVA and, in that capacity, to conduct appellate hearings at Regional offices. The transcripts of these hearings are then sent to the BVA for a decision by a Board panel. Although this does provide an opportunity for a hearing, the Committee is concerned that it is clearly an inadequate substitute for having the decisionmakers see and hear the claimant and other witnesses. In response to questions from the Chairman, the BVA Chairman testified at the June 9 hearing that there is no method for transmitting to the BVA any information about the hearing personnel's assessments of the credibility of the claimant or other witnesses.

The second alternative involves a BVA Section traveling to various Regional Offices and holding personal hearings for a certain number of days. Dut to the limitation on resources, there are a limited number of traveling Board hearings available (in FY 1987, for example, 739 such hearings were held). At the Committee's June 9 hearing, the BVA Chairman testified that because of the limited number of such traveling Section hearings, the BVA did not routinely tell claimants about this option. Specifically, Mr. Eaton noted, "[I]f you advertise that too much, you are going to get more than you can handle".

In this regard, the Committee notes that the form filled out by claimants to request an appeal to the BVA (Form 1-9) presents only two options to the claimant: One for a field hearing before Regional office personnel, as discussed above, and one for a hearing in Washington, D.C. There is no option presented for selecting a hearing before a traveling Board Section. According to Mr. Eaton, the traveling Board hearings are scheduled by giving veterans' service organizations a certain number of hearings, and allowing the service officers to designate who receives a hearing. When asked at the

Committee's hearing why the veterans' service organizations find it desirable to have hearings before the traveling Board Section, Mr. Eaton replied:

> It is always better in any case to have a personal hearing before the people who are deciding. There are exceptions to that; but generally, if you have a good case and you have a witness who is at all credible, you are better off facing those board members and telling them all about it. Those are the facts of life.
>
> Not only are travel board allowances higher, but personal hearings in Washington are higher—not as high as travel board—but there is not as much selection in the Washington office as in the travel boards. But they do pick and choose.
>
> They are only allowed a few cases on the travel board for each service organization. They can only have so many because there is only so much time available for the travel board to hear those cases. So, they pick the best cases.

When asked if there is a quota assigned to each service organization, Mr. Eaton replied, "In effect. It has to be that way."

The Committee believes strongly that this method of allocating hearings before traveling Board Sections is contrary to the accepted notions of evenhandedness, fairness, and justice in that every individual should have an equal opportunity to obtain the most beneficial process. Accordingly, the Committee bill contains a number of changes to the current scheme regarding notice about allocation of traveling Board hearings.

The first change which appears in section 514 of the Committee bill, would add a new section to title 38 (section 4011) to require the BVA to give notice to all claimants of the opportunity for a hearing before a traveling Section of the Board. The second change, which appears in section 513 of the Committee bill, would be to require that the traveling Board hearings be allocated on a first-requested first-served basis. The Committee recognizes that there are a limited number of such hearings available, but in order to help ensure that the credibility assessments and other first-hand impressions are available in some form fo the BVA Section that will actually decide the case, the Committee bill includes provisions to allow a claimant, if not scheduled for a traveling Board Section, to have a telephonic or closed-circuit television hearing with a BVA Section in Washington, D.C., or a videotaped hearing before Regional Office adjudication personnel. The audiotape or videotape would become part of the hearing record. Notice of these options would be required to be given.

Many of the procedures included in this section are derived from sections of the Administrative Procedure Act (5 U.S.C. 554, 555, and 556). However, before inlcuding similar provisions in the Committee bill, the Committee was careful to evaluate each for any detrimental impact on VA proceedings, and rejected provisions that it considered to be potentially disruptive. One example of this approach was in the area of cross-examination of witnesses before the BVA and the concomitant need for authority to subpena such witnesses. A number of witnesses over the years before the Committee have strongly emphasized the need for such authorities, basing their position on the belief that cross-examination is a critical tool for testing the assertions and opinions of witnesses. The Committee is well aware that such authority is available in other administrative proceedings for the adjudication of other Federal benefits (for example, under the Social Security Act). However, the Committee believes that such authority could significantly disrupt existing VA adjudications procedures. Thus, in an effort to provide a discovery tool to claimants and to maintain simultaneously the existing informal and supportive tenor of BVA and VA proceedings by not allowing cross-examination but providing a method to gather needed testimonial information, the Committee bill includes authority for a claimant to submit interrogatories to any person, including any employee of the VA.

Further to establish the independence of the Chairman, section 513 would assign to the Chairman the responsibility of resolving challenges to the use of interrogatories, including deciding when and under what circumstances subpenas and protective orders should be issued in support of interrogatories. Other changes to grant more control to the Chairman regarding BVA adjudication procedures include authorization to decide when an employee will be disqualified for personal bias in a proceeding before the Board and, with the Administrator, to prescribe regulations under which evidence is admitted and under which standards for objections to interrogatories that are consistent with protective orders would be established.

Notices of Procedures.—Section 514 of the Committee bill, which is derived from section 108 of S. 11, would require the Administrator, at each procedural stage of a claim, to provide a claimant and the claimant's authorized representative, if any, with written notice, in easily understandable language, of the procedural rights of the claimant and of the opportunity for further review. By inclusion of the requirement that such notices be "in easily understandable language", the Committee intends that the required notices be available in languages other than English, such as Spanish, when a substantial proportion of a particular VA facility's clientele have a limited English-speaking capacity and generally use such other languages as their primary tongue.

Effective Date of Awards in Reopened Cases.—Section 515 of the Committee bill, which is identical to section 110 of S. 11, would permit retroactive awards for claims reopened and allowed on the basis of new and material evidence which existed in the veteans' service records at the time of the original appeal, but which, for whatever reason, was not previously considered by the BVA.

Attorneys' Fees.—Section 516 of the Committee bill, which is derived from section 401 of S. 11, would amend section 3404(c) of title 38 so as to clarify that the limitations on attorneys' fees as articulated in section 3404 of title 38 are only applicable to cases involving claims for VA benefits and that where no claim for benefits is involved (for example, on constitutional challenges to regulations, Freedom of Information Act cases, on VA actions to collect or withold payments because of asserted overpayments or other alleged debts to the VA, and on other nonclaim cases), the individual and the attorney would not be restricted by the provisions in section 3404.

TITLE VI—HEALTH CARE

Part A—Programs Relating to Post-Traumatic Stress Disorder and Mental Health

Care for Vietnam Veterans With Service-Related Post-Traumatic Stress Disorder

Section 601 of the Committee bill contains an amendment offered by Chairman Cranston to require the VA to furnish inpatient and outpatient mental health services to Vietnam veterans who a mental health professional designated by the VA Chief Medical Director (CMD) has diagnosed, on the basis of a personal examination, as suffering from service-related post-traumatic stress disorder (PTSD).

Background

The Committee has long advocated that, inasmuch as service in combat is frequently associated with the development of PTSD, the VA be the leader in the diagnosis and treatment of this disorder. Two recent studies, released at Committee hearings on May 12 and July 14, suggest that the incidence of this disorder among Vietnam veterans is much higher than had previously been thought which, in turn, has raised serious questions about the VA's present capacity, under current law and practice, to furnish care needed by veterans suffering from this disorder.

The first of these studies, the Vietnam Experience Study released by the Centers for Disease Control (CDC) at the Committee's May 12 hearing, compared 7,924 veterans who served in Vietnam with 7,364 veterans who served elsewhere during the Vietnam era, including a two-day physical examination and psychological evaluation given to 2,490 veterans. With respect to psychological health, the CDC found that Vietnam veterans "seem to be functioning socially and economically in a manner similar to Army veterans who did not serve in Vietnam and generally were well-adjusted. However, the study did find certain significant differences between the two groups of veterans, including an increase of current psychological problems, anxiety, and depression among the Vietnam veterans. The CDC also found that 14.7 percent of the veterans who served in Vietnam have experienced combat-related post-traumatic stress disorder at some time either during or after their service and that 2.2 percent of the veterans in the study had this disorder during the month before their examination. These percentages translate to approximately 461,000 and 69,000 veterans, respectively.

The second study is an extensive PTSD and post-war-readjustment psychological problems study that Congress mandated four years ago (in Public Law 98-160) that the VA provide for. That study is being carried out by the Research Triangle Institute (RTI) of North Carolina at a cost of over $9 million. Initial results from the study were released by RTI at the Committee's July 14 hearing. RTI gave indepth, face-to-face interviews averaging 3 to 5 hours in length to over 3,000 individuals, including approximately 1,600 veterans who served in the Vietnam theater, 750 veterans who served during the Vietnam era but not in Vietnam, and 650 individuals with similar demographics who did not serve in the Armed Forces. In addition, a subset of over 300 Vietnam theater veterans and 100 Vietnam era veterans underwent a follow-up clinical interview with an expert mental health professional.

RTI estimates that about 15 percent of male veterans who served in the Vietnam theater are currently suffering from PTSD. This percentage represents a current demand for services of about 470,000 of the estimated 3.14 million men who served in the Vietnam theater. Among females, RTI estimates the current prevalence of the disorder to be about 9 percent of the estimated 7,166 women who served in the Vietnam theater, or about 650 cases. In the racial/ethnic subgroups of male Vietnam theater veterans, RTI found a much higher current prevalence of PTSD—about 19 percent, or 68,000 cases, among Black veterans, and "as high as 27 percent," or approximately 45,000 cases, among Hispanic veterans.

Both the CDC and the RTI studies confirm that a high percentage of Vietnam combat veterans suffer not only from severe chronic anxiety but also from substance abuse and dependence. Alcoholism has been estimated to afflict between 40 percent and 80 percent of Vietnam veterans with PTSD. For instance, at the VA's specialized inpatient program in Menlo Park, California, a recent survey of co-diagnoses among the inpatient veterans sampled 350 veterans of which 42 percent met the criteria for alcohol abuse or dependence. To meet this need, the Menlo Park PTSD program is reassigning 28 of its 90 beds to a coordinated PTSD-Alcohol unit. The Committee believes the VA should pay greater attention to the treatment of veterans with both PTSD and alcohol abuse or dependence.

During the Committee's July 14, 1988, hearing on PTSD, the VA's Chief Medical Director, Dr. John Gronvall, was asked if the VA had any reason to believe that the findings made, or the methodology employed by RTI were defective in any way. Dr. Gronvall replied:

> No, I have no reason to challenge the stated findings. We've had a very close working relationship with the study investigators, and we have had a team of technical experts involved in the study design and agreeing to the escalation of the budget of the study to ensure that the final output of the study was valid and could be used.
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> We clearly will give major attention to the study. And as I say, there is no reason that I am aware of—and I have asked that question very specifically—why we do not think that is a credible and valid finding. In fact, in talking with our staff about some kind of earlier "guestimates" or judgments that they have made, they think this is consistent with that.

The RTI findings raise very serious questions about the adequacy and the effect of VA treatment and compensation programs for

Vietnam veterans. According to the RTI data, approximately 470,000 Vietnam veterans are currently suffering from PTSD. The VA testimony at the Committee's July 14 hearing stated that about 158,000 of the veterans seen by its Vet Centers have never been "seen for PTSD, diagnosable according to present standards" and that about 20,000 veterans receive disability compensation for PTSD. The VA has only 16 specialized PTSD inpatient programs[1] most of which have patient completion rates of over 70 percent, and all of which have waiting lists for admission into the program, ranging between one week and six months with the majority between five and ten weeks in length. Moreover only 15 VA Medical Centers have special PTSD treatment teams (teams of four FTEE—two funded by Central Office and two from the existing budget at the medical centers—including one psychiatrist, who are specially trained in diagnosing PTSD) among its 172 Medical Centers.[2] Given the RTI data that 470,000 Vietnam veterans are currently suffering from PTSD and the RTI data from the preliminary report released August 15, 1987, which indicated that half of the male Vietnam theater veterans currently experiencing high levels of PTSD symptoms have never been seen by a mental health professional for their PTSD symptomology and 87 percent have not been seen recently by any health professional concerning their symptoms, it is apparent that a great number of veterans remain to be treated.

At the Committee's July 14 hearing, VA Chief Medical Director Dr. Gronvall also stated:

> Clearly, we need to assess what we are doing in light of the new evidence, [and] make plans to better meet the need as it has been identified by the results of a major national study.

The Committee also notes that, despite the fact that the VA Chief Medical Director has agreed with most of the recommendations made by the VA Special Committee on PTSD (established under section 110(b) of Public Law 98-528), a significant number of the recommendations have yet to be implemented. For instance, with regard to the specialized PTSD inpatient treatment programs, the Special Committee recommended in its 1986 report that these programs be visited every two years to provide "periodic evaluation of such units with respect to: purposes and goals, program planning and design, length of stay, aftercare, administrative support, funding, geographic distribution and clinical outcome"; that explicit standards be developed and used to evaluate the programs; and that there be at least one specialized PTSD unit in each region of the country. (With respect to the regional distribution of the specialized units, the Committee notes that six programs are in the northeast, three in the Great Lakes Region, two in the southeast, two in the West Coast, one in the southwest, and two for the entire mid-section of the country.) To date, none of these recommendations have been implemented, although the VA is in the process of developing a program guide. With regard to the use of treatment teams, the Special Committee has recommended, in each of its annual reports since 1985, that each VA Medical Center (VAMC) be provided with a team, and that these teams should be phased-in over a five-year period. As noted above, to date there are treatment teams at only 15 VAMCs.

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[1] These programs are located at the VA Medical Centers in Buffalo, New York; Montrose, New York; Northampton, Massachusetts; Togus, Maine; Coatsville, Pennsylvania; Lyons, New Jersey; Augusta, Georgia; Bay Pines, Florida; Cleveland, Ohio; North Chicago, Illinois; Tomah, Wisconsin, Topeka, Kansas; Palo Alto/Menlo Park, California; Tacoma, Washington; Little Rock, Arkansas; and Phoenix, Arizona.

[2] These treatment teams are located at the VA Medical Centers in Boston, Massachusetts; Brooklyn, New York; New York, New York; Philadelphia, Pennsylvania; Washington, D.C.; Allen Park, Michigan; Chicago (W. Side), Illinois; Hines, Illinois; Denver, Colorado; Minneapolis, Minnesota; Long Beach, California; San Francisco, California; West Los Angeles, California; Seattle, Washington; and Dallas, Texas.

The Committee believes that the VA has not met its obligations, under section 110(c) of Public Law 98-528, to establish and operate a National Center on PTSD. Pursuant to section 110(e), in 1984, the VA established the National Center for Stress Recovery at the Brecksville division of the Cleveland VAMC. although the CMD has been involved with this Center to a degree sufficient to ask the Special Committee in November of 1987 to conduct a review of the National Center's pertinence, at the Committee's July 14 hearing neither the CMD nor the VA's Director of Mental Health and Behavioral Sciences knew which Central Office official specifically was responsible for the National Center. Subsequently, on July 21, the VA advised the Committee that the Center will be accountable administratively within the Department of Medicine and Surgery in Central Office to the Associate Deputy Chief Medical Director and the Center Director will report quarterly to the Director, Mental Health and Behavioral Sciences.

The Special Committee's report about its site visit to the Center makes numerous recommendations with respect to reestablishing a "National Center". It is the Committee's hope that the VA act on the Special Committee's recommendations as soon as possible.

The Committee also notes that the Special Committee, in each of its annual reports, called for more research regarding effective treatment of PTSD. Despite the concurrence of the CMD that more research be done in this area, in FY 1987 the VA committed only $832,121 out of its $200-million research budget to PTSD research. The Committee believes that the creation of the Mental Illness Education, Research and Clinical Centers (MIRECC's), as provided for in section 604 of the Committee bill, can serve a valuable function in this regard.

On the question of compensation for PTSD, witnesses at the Committee's July 14 hearing expressed concern about dramatic inconsistencies among VA Regional Offices in rates of approval of PTSD claims and disability rates awarded in such claims. VA witnesses noted that this difference was being closely monitored, and often resulted from the lack of a diagnosis of PTSD. The Director of Mental Health and Behavioral Sciences expressed the view that there is a marked fluctuation and variation in the way C & P examinations are conducted across the VA system, and that the VA is in the process of developing guidelines and educational efforts to upgrade both the physicians and the reviewers. The Committee notes that in 1985 the Special Committee recommended that "in the future there be joint training and cross training between local clinicians and local adjudicators" concerning the diagnosis of

PTSD. Again, although the CMD concurred in the recommendation, a training program in this area is still under development.

The Committee notes that in H.R. 4800, the HUD-Independent Agencies Appropriations Act, Fiscal Year 1989, as passed by the Senate on July 13, 1988 includes a $5 million add-on for VA PTSD treatment proposed by Chairman Cranston. The Committee believes that this funding is a start toward marshalling the resources needed for more effective PTSD treatment.

Committee bill

In view of the continuing high prevalence of PTSD among Vietnam veterans and the extent, discussed above, of the VA's response and commitment of resources to PTSD treatment, the Committee believes that it is fully appropriate and necessary for Congress to direct the VA to provide care and services, on a priority basis, to Vietnam veterans diagnosed by a DM&S mental health professional, after a personal interview, as suffering with PTSD related to service. Hence, the Committee bill would amend section 602 of title 38 to add a new subsection (b) which would require the VA, in the case of a Vietnam veteran who a mental health professional designated by the VA CMD has diagnosed as suffering from combat-related PTSD, to furnish needed inpatient and outpatient mental health services to treat that veteran's PTSD on the same basis as if the disorder were service connected.

The thrust of this provision would be that, if an appropriate diagnostician concludes that a Vietnam veteran has PTSD, VA care would be forthcoming on a priority basis without the need for a formal adjudication of service connection.

The Committee recognizes that this change will almost certainly result in some reallocation of VA resources, but believes that any such change in focus so as better to serve the needs of veterans with PTSD is fully in accordance with the historic priorities of the VA to address those needs of veterans which are associated with their military service, most especially to seek to treat physical or mental health problems that are related directly to their service.

The Committee intends this provision to enable veterans suffering from PTSD to receive VA health care on a priority basis without the need for their PTSD to be adjudicated as service-connected. Veterans suffering from PTSD should not be made to await the outcome of the VA claims adjudication process before being able to receive treatment. Indeed, Vet Center Team Leaders who testified at the Committee's July 14 hearing stated that a veteran's participation in the claims process "completely stops the therapeutic process". Additionally, they testified that the process is a "very slow process", which can take four to six months to complete. Accordingly, Vet Center counselors are hesitant to suggest that a veteran undergo the adjudication process unless the veteran is in deep financial distresss. Although the Committee recognizes that some veterans in financial distress will still need to undergo the adjudication process to seek compensation, it is the Committee's intent that this provision will obviate the need for adjudication of service-connection before treatment is provided. As discussed above, the Committee hopes the VA will continue to educate its local clinicians and local adjudicators about PTSD in order to ensure that the adjudication process is as efficient, fair, and timely as possible.

The Committee notes that the VA has a continuing obligation to reach out to veterans suffering from PTSD. In light of testimony that women, blacks, and Hispanic veterans with PTSD are not seeking treatment in numbers corresponding to the prevalence of PTSD in those groups, the VA has a special obligation to conduct outreach activities to reach them as well as other minority group veterans.

Special Committee on Post-Traumatic Stress Disorder

Section 602 of the Committee bill, which is derived from section 10 of S. 2462, would require the DM&S Special Committee on Post-Traumatic Stress Disorder (PTSD) to submit three additional reports to the Administrator.

Background

The Special Committee was established pursuant to section 110(b) of the Veterans' Health Care Act of 1984, Public Law 98-528, to "assess, and carry out a continuing assessment of, the capacity of the Veterans' Administration to provide diagnostic and treatment services for PTSD to veterans eligible for health care furnished by the Veterans' Administration." That law required the VA's Chief Medical Director (CMD) to appoint "qualified employees" of DM&S to the Special Committee. Although it currently has nine members, it has consisted of twelve members over the last four years.

Pursuant to Public Law 98-528, the Special Committee has carried out comprehensive reviews of the VA's efforts to PTSD and has submitted four reports to the Administrator setting forth extensive findings and recommendations concerning such varied topics as methods of diagnosing PTSD, problems of patients seeking care for PTSD, treatment issues at generalized and specialized inpatient units, readjustment counseling centers, and outpatients clinics; data on VA treatment of PTSD; and research, education, and veterans' benefits related to PTSD. Section 110(e) of Public Law 95-528, required the Administrator to submit to the two Committees on Veterans' Affairs certain reports on the implementation of that section as well as on various other VA activities relating to PTSD. The Administrator has submitted each of the Special Committee's four reports to the Congress along with the CMD's comments. Under current law, the Administrator is required to submit one further report, by February 1, 1989, on the implementation of section 110 and and other PTSD matters.

The witnesses at the July 14, 1988, hearing on post-traumatic stress disorder supported the extension of the Special Committee's reporting requirements.

Committee bill

In order to ensure that the Special Committee continues its reviews and evaluations and that its findings are promptly reported to the VA and to the Veterans' Affairs Committees along with the CMD's comments on each of the Special Committee's recommendations, the Committee bill would require three additional reports by the Special Committee. The first report, due by April 1, 1989, would be required to set forth the Special Committee's evaluation of the results of the study mandated by section 102 of Public Law 98-160 on the prevalence and incidence of PTSD and other post-war psychological problems in readjusting to civilian life among Vietnam veterans, its assessment of the VA's capability to meet the need for diagnosis and treatment of veterans with PTSD, an evaluation of the Administrator's report on the study, and recommendations for any further or follow-up research on the matters addressed in the study. The second and third reports, due by February 1 of 1990 and 1991, respectively, would be required to provide information updating prior reviews of the overall efforts of the VA to meet the needs of veterans with PTSD. Within thirty days after receiving the first report, and within sixty after receiving each of the next two, the Administrator would be required to submit it, together with the VA's comments, to the Committees on Veterans' Affairs of the Senate and House of Representatives.

The Committee believes that, because of the strong relationship between exposure to combat and subsequent PTSD, the VA must continue to play a significant leadership role in the diagnosis and treatment of this disorder. The Special Committee has an important role in identifying areas for improvement and recommending solutions.

Study of Psychological Problems among Asian-American, American-Indian, Native-Hawaiian, Other Native-American Pacific Islander (including American Samoan Native), and Alaska Native Vietnam Veterans

Section 603 of the Committee bill, which is derived from S. 2521, would require the VA to carry out a scientifically-valid study of PTSD and post-war psychological problems in readjusting to civilian life among Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific-Islander (including American Samoan Native) and Alaska Native Vietnam veterans.

Background

Since the end of the Vietnam era, much debate has centered on the nature and extent of the psychological problems faced by Vietnam veterans as they returned to civilian life. While there has been a general consensus that some Vietnam veterans suffer from post-traumatic stress disorder (PTSD) and other psychological problems in readjusting to civilian life, until recently there has been no precise national estimate of the number of Vietnam veterans experiencing such problems. In order to address this issue, section 102 of Public Law 98-160, enacted in 1984, mandated the VA to conduct a "study of the prevalence and incidence of post-traumatic stress disorder and other psychological problems in readjusting to civilian life" among Vietnam veterans. The study was to be of sufficient size, scope, complexity, and design to provide national estimates of Vietnam veterans' mental health status, with special emphasis on the prevalence of PTSD and other post-war psychological problems in readjusting to civilian life among Blacks, Hispanics, and women. On September 12, 1984, the VA awarded the contract to conduct this study to the Research Triangle Institute, Inc. (RTI). This study has became known as the National Vietnam Veterans Readjustment Study (NVVRS).

On August 15, 1987, RTI released a preliminary report of the NVVRS findings. The final report is expected to be submitted on November 7, 1988. Through the preliminary report, it became clear that while the NVVRS oversampled the racial/ethnic groups of Blacks, Hispanics and women in order to develop estimates of the prevalence of PTSD and other post-war psychological problems in readjusting to civilian life among these groups, it did not oversample Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific-Islanders (including American Samoan Native), and Alaska Native populations. Because these various groups exist in small numbers in the general population of Vietnam veterans, oversampling would be required to derive an estimate of the prevalence of PTSD and other post-war psychological problems in readjusting to civilian life.

Based on the data on the current prevalence of PTSD that was reported to the Committee at its July 14, 1988, hearing on PTSD, it appears that the prevalence of PTSD among ethnic groups is much higher than among whites. For example, the findings for racial/ethnic subgroups of male Vietnam Theater veterans indicates that the prevalence for whites/others is about 14 percent, while for Blacks the prevalence is 19 percent and for Hispanics it is as high as 27 percent. Several witnesses at the hearing also indicated a cultural reluctance among various ethnic/racial groups, including Blacks and Asian-Americans, to seek treatment.

Committee bill

The Committee believes that the possible culturally-based reluctance among some of these groups to seek treatment and the reported higher percentage of PTSD among certain racial/ethnic groups already studied support the need to determine the extent to which the groups not oversampled in the NVVRS are suffering from PTSD and other post-war psychological problems in readjusting to civilian life. Accordingly, the Committee bill would require the VA to conduct such a scientifically-valid study, either in-house or by contract and to submit a report on the results of the study to the two Veterans' Affairs Committees by October 1, 1990. The Committee has also left the solution of specific methodologies to the Administrator and those designing the study.

Mental Illness Research, Education, and Clinical Centers

Section 604 of the Committee bill, which is virtually identical to the text of S. 2463, would provide for the establishment and operation of Mental Illness Research, Education, and Clinical Centers MIRECCs) at five VA medical centers meeting certain prescribed criteria, require at least one MIRECC to be designated by July 1, 1989, and, for these purposes, authorize the appropriation of $3.125 million for FY 1989 and $6.25 million for each of the following three fiscal years.

Background

The October 20, 1985, Report of the Special Purpose Committee to Evaluate the Mental Health and Behavioral Sciences Research Program of the VA, which was chaired by Dr. Seymour Kety (hereinafter referred to as the "Kety Committee") concluded that research on mental illness and training for psychiatrists and other mental health specialists at VA facilities were totally inadequate. The report noted that about 40 percent of all VA beds are occupied by veterans who suffer from mental disorders, whereas less than 10 percent of the VA's research resources are directed toward mental illness.

In order to improve and expand the capability of VA health-care facilities to respond to those needs, the Kety Committee recommended that centers of excellence be established to develop first-rate psychiatric research programs in the VA. The proposed centers would provide state-of-the-art treatment, increase innovative basic and clinical research opportunities, and enhance and encourage continuing education and training in the treatment of mental illness.

Based on the recommendations of the Kety Committee, the Committee began efforts last year to encourage more research into mental illnesses and to establish centers of excellence. First, legislation enacted on May 20, 1988, Public Law 100-322, includes a provision—derived from section 316 of S. 9 as reported by the Committee on November 6, 1987—to add express reference to mental illness research in the description of the medical research mission of the VA in section 4101(c)(1) of title 38. This reference in the law is intended to help counteract the historical trend of underfunding mental illness research.

Second, the Committee report accompanying that legislation (S. Rept. No. 100-215, page 138), urged the VA to establish three centers of excellence, or MIRECCs, as proposed by the Kety Committee. The VA has not yet taken any action in that regard.

Testimony received at the Committee's June 16 hearing was very supportive of S. 2463. The National Association of VA Chiefs of Psychiatry, the American Psychiatric Association, and the American Psychological Association stressed that the establishment of MIRECCs would improve the VA's ability to attract top-notch psychiatrists and psychologists and thus enhance its ability to provide high quality mental health services to veterans.

Dr. Ming Tsuang, Chief of Psychiatry at the West Roxbury (Mass.) VA Medicial Center, testified that, although a high percentage of VA bed days were devoted to veterans with psychiatric problems, psychiatric services within the VA have been "traditionally understaffed and underfunded . . . and that recruiting [VA psychiatrists] is getting more difficult." Dr. Tsuang also stated that MIRECCs would "have a positive influence far beyond their proportionate cost, in view of their high visibility and their potential for attracting 'critical masses' of scientists and clinicians to work intensively on the mental health care issues confronting the VA."

This provision was generally supported by those who testified on this subject at the Committee's June 16 hearing. The Administration testified that it did not need legislative authority to create MIRECCs, but did not express opposition to the provision.

Committee bill

Under the Committee bill, the VA would be required to establish MIRECCs at not more than five VA facilities which are geographically dispersed and meet certain criteria. At least one MIRECC would be required to be designated by July 1, 1989. The purpose of the MIRECCs would be (a) to improve and expand the VA's capability to respond to the needs of veterans suffering from mental illness—especially from conditions which are service-related—through research, the training of health personnel, and the development of improved models of clinical services, and (b) to advance scientific knowledge regarding mental illness, especially service-related conditions.

The proposed MIRECCs would be modeled after the successful Geriatric Research, Education, and Clinical Centers (GRECCs), which were established under section 302 of Public Law 96-330, enacted in 1980. MIRECCs would be designed to (a) congregate clinicians and investigators with a clear and focused clinical research mission, such as PTSD, schizophrenia, or drug and alcohol abuse; (b) provide training and educational opportunities for students and residents in psychiatry, psychology, nursing, social work, and other professions which treat individuals with mental illness; and (c) develop new models of effective care and treatment for veterans with mental illnesses, especially those which are service connected.

In order to designate a facility as the site for a MIRECC, the Administrator, upon the Chief Medical Director's recommendation, would have to determine that the facility has, or may reasonably be expected to develop, (a) arrangements with an affiliated medical school and an affiliated graduate school of psychology for the regular rotation of their residents and students through the center, (b) an arrangement under which nursing or other allied health personnel receive education and training in mental health care through regular rotation through the facility, (c) the ability to attract superior mental illness researchers, (d) a policy-making advisory committee composed of health-care and research representatives of the VA facility and the schools involved, and (e) the capability to evaluate effectively the activities of a MIRECC.

The Committee bill would promote research as the MIRECCs by requiring that, in the awarding of research funds for mental-illness projects, MIRECC applications be given a priority. Centers would include an emphasis on the psychosocial dimension of mental illness and on developing models for furnishing care and treatment of mental illness.

Further, the Committee bill would promote the dissemination of information regarding all aspects of MIRECC activities throughout DM&S through continuing education programs provided at Regional Medical Education Centers and other appropriate means.

Finally, beginning February 1, 1990, the Administrator would be required to submit three annual reports to the Congressional Committees on Veterans' Affairs on the research, educational, and clinical care activities at each MIRECC and on efforts to disseminate the information throughout the VA health-care system. The administration of the program would be assigned to the VA Central Office responsible for mental health and behavioral sciences, that is, the Director of Mental Health and Behavioral Sciences.

The Committee also again urges the VA—as it did last year (in Report No. 100-215, page 138, accompanying S. 9)—to create a Mental Illness Research Service, similar to research services it has created for each of the other categories of research expressly mentioned in the statutory provision, section 4101(c)(1) establishing the VA's research mission. As noted above, section 135 of Public Law 100-322, which originated in the Committee, added specific mention of mental illness to this description of the VA's research mission in this section. The creation of a separate service with its own budgetary allocation would help the VA to pursue more creatively cost-effective and innovative treatment for Veterans suffering from mental illness.

Readjustment Counseling Eligibility Extension

Section 605 of the Committee bill, which is derived from section 2 of S. 2462 which in turn was derived from section 301 of S. 1464 as reported by the Committee last September and passed by the Senate on October 16, would make two changes in the statutory eligibility for readjustment counseling under current section 612A of title 38.

First, this section of the Committee bill would extend readjustment counseling entitlement to veterans of service in hostilities after May 7, 1975, the end of the Vietnam era. Under this change, the Administrator, after consultation with the Secretary of Defense, would determine that service during specific periods of time in specific locations in which U.S. Armed Forces were under hostile fire would be qualifying service for readjustment counseling purposes. Second, under this section of the Committee bill, veterans of World War II and the Korean conflict, with a particular emphasis on serving those who were in combat with the enemy, would also be made eligible for counseling at VA facilities through the Readjustment Counseling Program if they requested it.

Background

Under current law, section 612A(a) of title 38, entitlement for readjustment counseling services is limited to Vietnam-era veterans. In recent years, the Committee has considered various proposals to expand access to such services, including for those veterans who have served since the end of the Vietnam era in combat or combat-like situations and veterans of earlier wars.

The provision relating to those who have served since the end of the Vietnam era recognizes that members of our Armed Forces are at times exposed to combat situations short of declared war—such as existed in Beirut or Grenada or in connection with our actions against Libya, or in connection with Navy efforts in the Persian Gulf, or that possibly exist today in Central America. These situations well might produce the need among those involved in them for readjustment counseling to help deal with the psychological aftermath of the experiences and is particularly important in light of the current understanding, as noted in the VA's testimony at the Committee's July 14 oversight hearing on issues related to post-traumatic stress disorder, that early intervention can ameliorate the severity and persistence of symptoms in an individual following exposure to a traumatic event.

With regard to eligibility for veterans of prior wars, at an April 30, 1981, Committee hearing Dr. Arthur Arnold, then the Chief of Psychiatry at the Bay Pines, Florida, VA Medical Center and now the Chief of Staff at the Fayetteville, Arkansas VAMC, testified as follows about a World War II veteran he was treating for alcoholism:

> There was a man in his late 50's who had been treated in VA hospitals for probably 30 admissions for alcoholism over the last 40 years who finally, because of the growing awareness of the staff of the importance of knowing the war experience, was asked what he had done in World War II.
>
> Finally, it came out that he has had nightmares for 40 years of being under fire pinned down on a beach in the South Pacific for 72 hours as a teenage corpsman trying to patch pieces of bodies together. This had never come out * * * until now, so the man had never really gotten treatment that went to the core of his problems.

It seems clear that that veteran was suffering from problems related to his combat experience and needed assistance which recognized that fact.

In a similar vein is an article by Marlene Cimmons in the August 15, 1985, Los Angeles Times, headlined "Stress Problems Show Up Among Veterans of WWII", which describes war-related problems among WWII veterans. This article was printed in the Congressional Record at Chairman Cranston's request on July 15, 1987, at S10068–69.

The Committee notes the emergence of various research papers relating to findings of PTSD in older veterans. One such example is a paper entitled "Group Treatment of Post-Traumatic Stress Disorder in Older Veterans", which was presented at the Annual Convention of the American Psychological Association in Los Angeles in August 1985. This paper describes the authors' findings of "evidence of PTSD in veterans of World War II and Korea which has persisted for as much as 40 years." A case study in the September 1985 American Journal of Psychiatry entitled "Posttraumatic Stress Disorder: A Thirty-Year Delay in a World War II Veteran" describes in detail a veteran's history and how PTSD was manifested after a delay of many years, following the veteran's forced early retirement. This case study generated two letters to the American Journal of Psychiatry, one in July 1986, and one in November 1986, in which other cases of PTSD in older veterans were discussed. An article in the October 1986 issue of Military Medicine entitled "Post-Traumatic Stress Disorder in the Older Veteran" discussed a group therapy program for older veterans with PTSD begun in 1981 at a VA medical center in Texas. An article in the February 1987 issue of Hospital and Community Psychiatry entitled "Post-Traumatic Stress Disorder in World War II Naval Veterans" discussed the authors' findings of PTSD among a group of World War

II naval veterans who were attending a reunion of the crew of a U.S. destroyer that saw heavy combat in the Pacific during the war.

With further reference to this provision, Dr. Arthur Blank, Director of the VA's Readjustment Counseling Service, testified during the Committee's June 16 hearing, in response to a question from Senator Rockefeller, that Vet Centers nationwide are presently seeing as new clients approximately 375 World War II and 400 Korean Conflict veterans per month.

Finally, with reference to this provision, Administrator of Veterans' Affairs Thomas Turnage, during the Committee's March 4 hearing on the VA's FY 1989 budget, in describing the VA's recent approach to the Readjustment Counseling Program, stated:

> But let me suggest one other thing about the attitude we have had. We said, 'Don't only treat Vietnam veterans, treat active-duty types, treat World War II types, treat Korean veterans, or anyone else who needs that kind of help'.

The Committee is aware of at least two other occasions on which the Administrator expressed similar thoughts—in July 1986 in a meeting with the VA's Advisory Committee on Readjustment of Vietnam Veterans and in February 1988 before that same committee.

In 1986, Administrator Turnage said:

> * * * when I go out I find out that some of them [Vet Centers] have been treating Korean veterans and World War II veterans. And then I find out—and they say to me, with a smile, 'You know, of course, that we are not authorized to do that but we do it under the rug.' Well, why the hell is it under the rug? If, in fact, it has this kind of benefit to the system, why isn't the thing expanded to include all people who have this kind of problem or anxiety or need? Why are they not legitimized to go and be able to use this kind of outlet?

At the 1988 meeting, the Administrator also addressed this point, noting

> * * * I note that without any guidance from me, where I visited Vet Centers, I know they don't limit their services to Vietnam veterans, they provide it surprisingly not only to Korean veterans and World War II veterans, but they have provided services to active duty people who were in military organizations close by, who perceived that they needed this kind of counseling or services, and had been done.
>
> I have encouraged that, so to the extent we have broadened the scope of the support and provided within these centers, and I think that is only just and right.

This provision was supported by all of the veterans organizations that testified at the Committee's June 16 hearing as well as by a panel of 4 Vet Center Team Leaders at the July 14 PTSD oversight hearing. However, despite Administrator Turnage's numerous public statements of support for an expansion of eligibility for readjustment counseling for veterans from earlier wars, such an expansion was opposed by the VA. The VA did support the proposed entitlement to readjustment counseling for veterans who have served in combat situations since the end of the Vietnam era. With specific reference to the difference between Administrator Turnage's prior statements and the VA's official position, VA General Counsel Donald Ivers, stated:

> The Administrator's position, from that testimony and other statements that he has made, he felt at the time he was commenting on the situation as it currently exists, where we have been advised that World War II and Korean Veterans have been appearing on occasion at Vet Centers for counseling.
>
> There is no support in the Agency at this time for expanding that program to include World War II and Korea. We feel that the current programs that are available within the VA Medical System are adequate to address those problems with respect to World War II and Korea. Again, we do not oppose expansion of the program to include the post-Vietnam Era readjustment counseling.

Committee bill

The Committee bill would expand access to readjustment counseling services to two groups of veterans.

Under the first of these expansions, entitlement for such services would be accorded to those veterans who have served since the end of the Vietnam era (May 7, 1975) whose service, during specific periods of time and in specific locations, as determined by the Administrator to be comparable in terms of danger to service of Armed Forces personnel in combat with the enemy during a period of war. The Committee expects that the authority of the Administrator to make the finding that members of the Armed Forces were subjected to danger from armed conflict comparable to danger to which members have been subjected in battle with the enemy during a period of war would, if enacted, result in very limited expansions of readjustment counseling entitlement.

The second of these changes would accord eligibility for, but not entitlement to, such services to veterans of World War II and the Korean conflict, with a particular emphasis on serving those who were in combat with the enemy. With reference to this new authority, it is the Committee's view that the Federal Government should never allow to go unmet the requests for counseling help from those who have experienced the stress of combat while serving in the Armed Forces.

Community-Based Alcohol and Drug Treatment Services

Section 606, which is derived from S. 2105 and section 2 of S. 2294, would make permanent the VA's authority to provide drug and alcohol care, treatment, and rehabilitation services through contracts with halfway houses and other community-based treatment facilities and would require the VA to conduct a longitudinal study of veterans who received treatment under this program.

Background

The VA's program of community-based contract drug and alcohol treatment was originally established as a pilot program under section 104(a) of Public Law 96-22, enacted in 1979. In 1985—based on the findings of the first VA report on the operations of the program, submitted in May 1984, and after receiving the views of veterans who had been placed in halfway houses and other community-based facilities at VA expense and of VA employees who worked with veterans with drug and alcohol dependencies—it was extended for three years (through fiscal year 1988) by section 101(a)(2) of Public Law 99-166. Section 101(a)(3) of Public Law 99-166 required the Administrator to submit a further report on the program, foscusing on both the medical advantages and cost-effectiveness of furnishing care under this program.

This report—due on February 1, 1988— was received by the Committee on April 20, 1988. Consequently, S. 2105, which was introduced on February 29, proposed only an extension of the contract program, pending receipt of the report.

Upon review of the report, "Evaluation Study of the Contract Program for Veterans with Alcohol and Drug Dependence Disorders", the Committee concurs with the Administration's proposal in section 2 of S. 2294 to make the contract authority permanent.

The study found that the program was very successful and cost-effective in treating veterans with serious drug and alcohol dependencies. More than 75 percent of those veterans who had completed the residential treatment program were 6 months later found to be abstaining from any substance abuse, whereas only 58 percent of veterans who had dropped out of the program remained sober. In addition, employment rates for the treatment group increased from 16.1 percent at the time of admission to 46.8 percent at the time of follow-up.

Testimony presented at the Committee's June 9 hearing was uniformly very supportive of making the contract program permanent. Witnesses stressed that residential treatment programs offer veterans extended positive reinforcement, counseling, and rehabilitation assistance to help them reintegrate into society and to find employment and housing following detoxification.

Several witnesses raised concerns that, given the serious chemical dependencies of the veterans referred to community facilities, the maximum length of 60 days prescribed by the VA for a veteran's stay at such a facility is inadequate and that even the permissible 30-day extension, when approved, is often too restrictive for a small proportion of veterans with very serious problems.

Committee bill

The Committee bill would make the contract drug and alcohol abuse treatment program authority permanent. In addition, section 606 would substitute for the existing data collection and reporting requirements a requirement that the VA conduct or provide for an eight-year longitudinal study of veterans who have received care through the contract program. An interim report containing information obtained during the first four years would be required no later than February 1, 1993, and a final report, including the determinations and conclusions of the Administrator, would be due no later than March 31, 1998.

The purpose of the study would be to assess the long-term impact of such treatment with regard to drug or alcohol use, the need for subsequent hospitalization for drug or alcohol abuse, veterans' employment, and other factors that the Administrator considers appropriate. The study would also compare different community residential care models to determine whether certain models are more successful for individuals with certain addictions and with varying levels of resources and needs.

Very little data of this nature exists both for veterans and the general propulation. With [illegible]4 VA medical centers participating in the contract program using more than 400 community residential programs which represent many different models of providing care, the VA represents an ideal setting to conduct this type of clinical evaluation. The Committee believes that information obtained from this study could very significantly benefit veterans, as well as nonveterans, with alcohol or drug dependencies.

The Committee urges the VA to reexamine its policy which limit stays in residential treatment facilities to 60 days with a permissible 30-day extension. In addition to hearing testimony that supports extending the maximum allowable length of stay and providing for greater flexibility in this regard, the VA report on the contract program also found that a significant number of veterans continue treatment in halfway houses beyond the 60- or 90-day VA contract-supported period.

Part B—Other Health-Care Programs

Respite Care

Section 611 of the Committee bill, which is identical to S. 2446, would (1) amend section 620B(c) of title 38 to extend for one year, through fiscal year 1990, the VA's authority to furnish respite care to certain chronically ill veterans, and (b) amend section 201(b)(2) of Public Law 99–576 to extend also for one year, until February 1, 1990, the due date for a VA report on its evaluation of furnishing such care.

Background

The ultimate goal of respite care, which is a relatively new form of care, is to help maintain individuals with serious chronic illnesses in their homes as long as possible before having to resort to institutional care. It is widely agreed that, where medically feasible, maintaining a person at home is better for the person's overall health status, and a far more efficient and cost-effective way to meet the individual's health-care needs. Very often a key to a chronically-ill person being able to remain at home is the regular availability of a spouse, child, or other relative or close friend of the patient to provide meals, homemaker, and other personal-care services that, combined with outpatient treatment, home-health services, or other sources of medical attention, meet the individual's full range of needs. Respite care, by providing scheduled relief for the primary provider or providers of personal care—in other words, care for the caretaker—should make it possible to maintain the person in need of care at home for a longer period of time or indefinitely.

A provision authorizing the VA to provide respite care was included in S. 2442 as reported by the Committee on September 16, 1986, subsequently passed by both Houses (in H.R. 5299), and enacted as section 201 of Public Law 99-576 on October 28, 1986.

That provision authorized the VA to furnish respite care services through September 30, 1989, to a veteran who is eligible to receive hospital or nursing home care under section 610 of title 38. Respite care for the purposes of section 620B is defined as hospital or nursing home care which "(1) is of limited duration; (2) is furnished in a VA facility on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home; and (3) is furnished for the purpose of helping the veteran to continue residing primarily at home".

Additionally, the Administrator is required by section 201(b) of Public Law 99-576, if the VA furnishes respite care under section 620B, to conduct "an evaluation of the health efficacy and cost-effectiveness" of furnishing respite care and, not later than February 1, 1989, to submit to the Senate and House Committees on Veterans' Affairs a report containing the results of the evaluation, including any plan for administrative action and any recommendation for legislation, that the Administration considers appropriate.

Guidance on the implementation of this authority was not provided until November 1987 (DM&S Circular 10-87-130). Therefore, efforts to collect data, as required by Public Law 99-576, were hampered. On December 8, 1987, medical centers were provided instructions for gathering the data required to study the cost-effectiveness and health efficacy of furnishing respite care.

VA policy stipulates that respite care may be provided for up to 30 days in a calendar year to eligible veterans who are suffering from a chronic illness and reside primarily at home and who are recommended for respite care by a VA treatment team. The duration of any one respite care admission is not to exceed 14 days and the frequency of admission is not to exceed once a quarter. The policy prohibits respite care from being provided in an ambulatory care program, in a domiciliary bed, through a contractual agreement, or in the home. According to the DM&S Circular, the veteran must be enrolled in one of the following VA programs: (1) Post-Hospital Care, (2) Adult-Day Health Care (ADHC), (3) Hospital-Based Home Care (HBHC), (4) Outpatient/Fee Basis Care, or (5) any other outpatient program in which VA personnel provide care.

VA program management guidelines as outlined in the Circular require that the respite care program be under the direction of a Respite Care Coordinator—appointed by the Medical Center Chief of Staff—who is responsible for coordinating referrals and admissions, and orienting the patient and caregiver to the program. An interdisciplinary team, composed of the physician primarily responsible for the patient's care and a nurse and social worker assigned to the respite care program or composed of the ADHC, HBHC, or mental health interdisciplinary teams, is responsible for screening the patients and formulating the respite care treatment plan for each patient, including the recommended nature, frequency, and duration of patient activities for the veteran while residing in the hospital or nursing home care unit.

All veterans service organizations testified at the Committee's June 16, 1988, hearing in general support of an extension of the VA's respite care program. The VA urged the Committee to enact a 2-year extension to allow more thorough and complete analysis of the program.

Committee bill

Although the Committee is disappointed that there was a delay in starting up the respite care program, the Committee recognizes that more extensive experience is needed for the conduct of a meaningful evaluation and believes that the services provided veterans and their families under this program should continue while Congress awaits the evaluation report. Thus, the Committee bill would extend for one year both the VA's authority to conduct this program and the date by which the Administrator must submit the evaluation report. The Committee believes that the postponement of the report deadline for 1-year should provide the VA with adequate time to conduct a thorough review of this important pilot program.

Contracts and Grants for Care in the Philippines

Section 612 of the Committee bill, which is derived from section 3 of S. 2462 and section 5 of S. 2294, would amend section 632 of title 38 to (a) extend for one year, through fiscal year 1990 (1) the authorization in section 632(b) of annual appropriations of $500,000 for grants to the Veterans Memorial Medical Center (VMMC) in Manila to assist in equipment purchases for and the rehabilitation of the facilities of the VMMC, and (2) the VA's authority in section 632(a) to contract with the VMMC for the care and treatment of certain U.S. veterans in the Philippines; and (b) require the Administrator to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives certain reports relating to the use of the grant funds and to the furnishing of care to U.S. veterans in the Philippines.

Background

The Philippine Islands were acquired by the United States after the Spanish-American War. During World War II, hundreds of thousands of Americans and Filipinos served side by side. In 1946, the Republic of the Philippines gained its independence from the United States after several years of negotiations between the United States and the Commonwealth of the Philippines.

The Republic of the Philippines is the only foreign country in which the Veterans' Administration provides grant funds for the support of a health-care facility and is authorized by statute to contract with a specific facility for the care of U.S. veterans.

U.S. Veterans.—There are two basic categories of Filipinos who have served in or with the United States Armed Forces in the Philippines. First are those with active-duty service in the regular components of the United States Armed Forces—including approximately 50,000 Filipinos who served before and during World War II as Philippine Scouts, called "Old Scouts", and postwar veterans of the United States Armed Forces. The Department of the Navy carries on an active recruitment program in the Philippines. These veterans—referred to as "U.S. veterans"—and their dependents and survivors are eligible for all benefits and services available to American veterans and their dependents and survivors. In fiscal year 1987, 11,637 persons were receiving VA benefits in the Philippines based on the service of U.S. veterans.

"Filipino Veterans".—Members of the other group, comprising about 19,771 persons, are eligible for certain specified benefits as a result of military service with (but not in or as members of) United States military forces during and immediately after World War II. These include approximately 110,000 Filipinos who served in the Philippine Commonwealth Army; approximately 312,000 who fought in recognized guerrilla units during World War II; and 30,000 Philippine Scouts, called "New Scouts", who served after World War II. These veterans—referred to as "Filipino veterans"—are eligible for service-connected disability compensation and burial benefits. The survivors of Filipino veterans are eligible for VA death compensation and disability and indemnity compensation; and the children of those veterans who are permanently and totally disabled from service-connected clauses, or who have died from such causes, are entitled to VA educational assistance benefits. All benefits based on the service of Filipino veterans are payable in Philippine pesos at the rate of 50 cents per U.S. dollar otherwise authorized.

Health-Care.—Since 1948, the United States has provided funds to support health-care for certain veterans residing in the Philippines. With the enactment of Public Law 80–865 on July 1, 1948, a five-year VA grant program, not to exceed $3.2 million in grant assistance in any one fiscal year, was authorized to be established for the service-connected medical care of "Commonwealth Army veterans".

Public Law 84–421, enacted on June 18, 1954, extended this grant program for five years but reduced, by $500,000 per year, the amount of the grant so that by the end of fiscal year 1959 the expenditures authorized for this purpose were $1 million. Later, with the enactment of Public Law 85–461, on June 18, 1958, the grant program, authorized for an additional five-year period at a rate not to exceed $2 million for any one fiscal year, was extended to include the care of the non-service-connected disabilities of Filipino veterans who were unable to defray the cost of their care.

Public Law 88–40, enacted on June 13, 1963, extended the grant program for ten years, with the grant amounts not to exceed $500,000 annually. However, on September 30, 1966, with the enactment of Public Law 89–612, the authorization for appropriations of grant funds was increased to not to exceed $1.2 million for fiscal year 1967 and not to exceed $2 million for each fiscal year thereafter through fiscal year 1973. This law also provided for payments for hospital care for the New Scouts for their service-connected disabilities and for their non-service-connected disabilities if they enlisted before July 4, 1946, qualified as veterans of a war, and were unable to defray the expenses of necessary hospital care.

Public Law 93-82, enacted on August 2, 1973, and Public Law 95-520, enacted on October 26, 1978, continued the grant program, at not to exceed $2 million for any one fiscal year, through fiscal year 1981. An August 3, 1966, letter from the Administrator of Veterans' Affairs to the Chairman of the House Veterans' Affairs Committee, printed in both the House and Senate Veterans' Affairs Committees' reports (Report Nos. 95-111 and 95-825, respectively), stated:

> The existing hospital and medical aid program has been based upon the premise that there was an obligation to provide some medical assistance for Commonwealth Army veterans, but this has been limited to those who incurred their disabilities in service and then only for a temporary period after which it was assumed that the financial responsibility for such care would be taken over by the Philippine Government.

In addition to the grant program for Filipino veterans, the Veterans Memorial Medical Center (VMMC) in Manila, dedicated in 1955, was built by the United States, at a cost of $9.4 million, as a 1,000-bed facility for the purpose, as specified in Public Law 80-865, of providing inpatient care to Commonwealth Army veterans who served during World War II.

A 1958 law, Public Law 85-461, authorized the Administrator to contract with the VMMC to pay certain amounts for the service-connected and non-service-connected hospital care of eligible U.S. veterans. Later, in 1966, language in Public Law 89-612 stated the need to replace and upgrade the existing VMMC physical plant and the need for new equipment if the United States was to continue the contract agreement and $500,000 was authorized to be appropriated to be used by the Administrator for making grants to the VMMC for this purpose. That law also provided that any such appropriation would remain available until expended. Public Law 93-82, enacted on August 2, 1973, authorized the annual appropriation of $50,000 through fiscal year 1978 to assist with the maintenance and upkeep of the facility and the purchase of new equipment, and this authorization was renewed through fiscal year 1980 by Public Law 95-520. Public Law 97-72 increased the authorization of appropriations for this purpose to $500,000 through fiscal year 1986 and also provided for the appropriations to remain available until expended. Public Law 99-576, enacted on October 28, 1986, extended these provisions through fiscal year 1989 and required the VA to submit a report describing the use of funds provided each fiscal year.

Currently, the average daily census at the VMMC is 550 of which 50 are U.S. veterans. In fiscal year 1987, the Administrator approved the expenditure of $486,402 for various equipment purchases, including medical equipment, dietetic equipment, and two elevators for the VMMC. Funds were also spent for repairs to the operating rooms and supply building, installation and servicing of elevators, and transportation of radiology equipment from older clinic buildings to the VMMC. Unobligated funds which carried over into fiscal year 1988 totalled $341,179. Tentative plans for the use of these funds include purchase of medical and office equipment, installation of a telephone system, waterproofing of a roof, and renovations to a kitchen.

Both the current authority to contract for hospital and medical care for U.S. veterans, including nursing home care, and the authority for the $500,000 annual appropriation to be used for construction and equipment grants expire on September 30, 1989. At the Committee's June 16, 1988, hearing, section 3 of S. 2462, which would have extended the contract authority and the authorization of appropriations for the grant program for three years, received general support and no opposition, except that the VA testified in favor of legislation which had been introduced upon the Administration's request, S. 2294, which would have provided for five-year extensions.

Immediately prior to the Committee's hearing, a copy of a May 10, 1988, letter from the Administrator to the Chairman of the Senate Subcommittee on the HUD-Independent Agencies was received by the Senate Veterans' Affairs Committee. This letter contained a request for an additional $500,000 appropriation for FY 1989 (despite the fact that only $500,000 was authorized for FY 1989) for the replacement and upgrading of equipment and rehabilitation of the physical plant and facilities of the VMMC. The Senate Veterans' Affairs Committee received no VA communication in regard to this request or in justification of the need for these funds; and during the June 16 hearing, the VA did not mention the need for an additional $500,000 for the Philippines and urged the Committee to approve extension for five instead of three years.

Committee bill

Since that time, the VA has informally furnished the Committee with additional information regarding conditions at the VMMC which indicates a great number of serious deficiencies at the VMMC, including but not limited to the following: the roof is leaking; an elevator is non-functioning; patient beds have rusted; toilets and urinals do not work; the Intensive Care Unit has no monitoring equipment; disposable syringes are being resterilized for further use; latex gloves are being "reconditioned"; and much equipment is obsolete or not usable. The Committee believes that much more information in regard to the cost of correcting these deficiencies, the priority associated with correcting each deficiency, and any impact that any change will have on foreign-policy considerations is needed by the Congress prior to the enactment of any long-term extensions or increases in the grant amounts authorized. Therefore, the Committee bill would (a) extend both the authorization of appropriation for the grants and the contract authority for only one year—through fiscal year 1990—and (b) require three reports. The first and third reports would be due not later than February 1, 1989, and 1990, would be required to contain information describing the use of grant funds provided to the Republic of the Philippines under section 632(b) of title 38 during the preceding fiscal year. The second report, due not later than May 1, 1989, would be required to contain (1) information for each of fiscal years 1986, 1987, and 1988, (with breakdowns providing such information with respect to U.S. veterans being furnished care or treatment for service-connected disabilities and those being furnished care or treatment for non-service-connected disabilities) the numbers of U.S. veterans furnished care at VA expense pursuant to section 632(a), the number of inpatient days of care and outpatient visits so furnished, the amounts of such care and visits provided at the VMMC and at other facilities in the Republic of the Philippines; (2) an analysis comparing the cost-effectiveness of furnishing care through the VMMC or other facilities in the Philippines, and the quality of care available at the VMMC and such other facilities; (3) a projection of the needs of U.S. veterans in the Philippines during fiscal years 1990 through 1993; (4) a projection of the VMMC equipment and physical plant upgrades required to maintain the provision of an appropriate quality of care furnished to U.S. veterans at the VMMC; (5) the VA's plans for meeting the needs of U.S. veterans residing in the Philippines; (6) any planned administrative actions, and any recommendations for legislation, that the Administrator considers appropriate to include in the report; and (7) any comments the Secretary of State may wish to make on the contents of the report.

The Committee also believes that this should be an issue that the next Administration should focus on and come to grips with and the May 1, 1988, report to the Committees is designed to achieve this.

Sharing of Specialized Medical Resources

Section 613 of the Committee bill, which is identical to section 7 of S. 2462, would amend sections 5051 and 5053 (a) and (b) of title 38 to revise the VA's authority to enter into agreements for sharing scarce medical resources so as to (a) expand the categories of facilities with which the VA may enter into sharing agreements to include all health-care facilities, (b) delete the requirement that reimbursement rates cover full costs and substitute the standard used in section 5011 for VA-Department of Defense (DOD) sharing agreements (a "methodology that provides appropriate flexibility" after costs are taken into account), and (c) provide that payments for the use of VA resources be returned to the VA facility involved.

Background

Subchapter IV of chapter 81 of title 38, relating to the sharing of medical facilities and information, was enacted in 1966 by Public Law 89–785 for the purpose, in part, of improving the care furnished veterans by authorizing the VA to enter into agreements with medical schools, hospitals, and research centers under which the VA could receive from or share with these facilities specialized medical resources which might otherwise not be feasibly available or effectively utilized for veterans or others. Specifically, under section 5053(a) as enacted in 1966, VA "hospitals" could enter into arrangements with "other hospitals (or other medical installations having hospital facilities) or medical schools or clinics" for mutual use or exchange of use of (a) a non-VA specialized medical resource when the arrangement would obviate the need for the VA to acquire that kind of resource, or (b) VA specialized medical resources which are justified on the basis of veterans' care but which are not utilized to their maximum effective capacity. Section 304 of Public Law 96-151, enacted in 1979, expanded this authority to include sharing arrangements with organ banks, blood banks, and similar institutions. Over the past ten years, from fiscal year 1978 through fiscal year 1987, the sharing program has grown from 224 contracts to 333 contracts. The cost of resources acquired by the VA has grown from approximately $12 million to $38.8 million, while the value of resources provided by the VA has grown less rapidly, from $7 million to $11.7 million.

Regarding the question of the types of facilities with which the VA should be authorized to share resources, the Committee notes that since the enactment in 1983 of Medicare's so-called "prospective payment system" in Public Law 98-21, many specialized medical procedures which formerly were performed only in hospitals have been moved to outpatient facilities. A variety of entities furnishing community health care has been spawned, and it is sometimes difficult to fit all such facilities into conventional, familiar categories.

With respect to the charges which the VA may specify or require, current law, in section 5053(b) of title 38, requires that sharing arrangements with community facilities provide for "reciprocal reimbursement based on a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment." Contrasted with this standard is the much less restrictive standard in section 5011(e) of title 38, for sharing agreements entered into between the VA and DOD. That standard requries that reimbursement be based upon a mutually-agreed upon "methodology . . . that provides appropriate flexibility to the heads of the facilities concerned to take into account local conditions and needs and the actual costs to the [providing facility] . . . of the health-care resources provided." Under this formulation, heads of VA and DOD medical facilities may negotiate a rate that is less than actual cost.

The General Accounting Office (GAO) March 1988 report, GAO/HRD-88-51, entitled "VA/DOD Health Care—Further Opportunities to Increase the Sharing of Medical Resources," stated, on page 18, that several directors of VA facilities were unaware of the less restrictive standard in section 5011 and, when negotiating with DOD facilities, applied the standard set forth in section 5053(b) which requires full cost reimbursement. The GAO concluded that the application of the full-cost requirement set forth in section 5053(b) served as a disincentive to sharing between the two agencies when the full cost of the services is greater than the price at which the same services may be obtained in the community.

At the Committee's June 16, 1988, hearing, section 7 of S. 2462 received general support, including that of the VA and no opposition.

Committee bill

The Committee believes that, if the VA is to be able to take full advantage of sharing arrangements, it must have the flexibility to enter into agreements with new entities or entities which already exist but are providing a different level of care than in the past. Therefore, the Committee bill would expand the categories of facilities with which the VA could enter into sharing arrangements so as to encompass any health-care facility.

The Committee bill would also amend section 5053(b) to incorporate the payment standards provided for VA-DOD sharing—a "methodology that provides appropriate flexibility to the heads of facilities concerned"—and to require that funds accrued as a result of these agreements be returned to the VA facility involved.

The Committee believes that it reasonable to conclude that an impediment similar to that which the GAO found when reviewing VA/DOD sharing exists with respect to sharing between VA and non-federal facilities, that is, full-cost reimbursement can be greater than the price at which the same services may be obtained in the community and may preclude some mutually beneficial arrangements. The purpose of entering into sharing arrangements is to improve VA care by facilitating the furnishing of a complete range of health-care services to veterans and to provide for fully effective utilization of VA specialized medical resources when veterans' immediate needs do not require maximum utilization of those resources. The Committee believes that providing the VA with the greater measure of flexibility such as is specified in section 5011 would help to ensure that the stated intent of the sharing authority could be more fully realized.

In addition, the Committee believes that, as also provided in section 5011 with respect to VA/DOD sharing, requiring the funds received by the VA to be returned to the VA facility providing resources could eliminate a disincentive to VA facility directors seeking out and entering into sharing arrangements that could strengthen their capacities to provide health-care services to veterans.

State Home Construction Grants

Section 614, which is identical to section 9 of S. 2294, would amend section 5033(a) of title 38 to extend for three years, through September 30, 1992, the authorization of such annual appropriations as are necessary for the State Veterans' Home construction grants.

Background

The VA participates in two separate programs of assistance to State Home hospital, nursing home, and domiciliary facilities: a program (under subchapter V of chapter 17 of title 38) of per diem payments for care provided to eligible veterans and a program (under subchapter III of chapter 81 of title 38) of matching grants for the construction, remodeling, or renovation of State Home facilities.

Currently, a total of 35 States operate 56 State Homes with a total of 18,676 beds providing hospital (689 beds), nursing home (11,274 beds), and domiciliary (6,713 beds) care. For fiscal year 1988, $40.3 million was appropriated for the State Home construction program. As of the end of June 1988, there was a nearly $183-million backlog of eligible pre-approved projects. The VA has requested $42 million for this program for fiscal year 1989, and both Houses of Congress have agreed to this funding level as part of the

HUD-Independent Agencies Appropriations Act, FY 1989, H.R. 4800, passed by the House on June 22, 1988, and passed by the Senate on July 13, 1988.

Committee bill

The Committee bill would extend for three years, through September 30, 1992, the authorization to appropriate such sums as are necessary to carry out the State Home construction grant program under subchapter III of chapter 81 of title 38. The Committee strongly supports the State Home program and its continuation as an important link in meeting the needs of our aging veteran population, and believes that continuing the authorization of appropriations for this program is fully justified in light of its importance in overall efforts to meet the health-care needs of the aging veteran population.

Pilot Programs for Providing Assistive Animals

Section 615 of the Committee bill, which is derived from S. 2207 and S. 2511, would require the VA to conduct a 4-year (fiscal years 1989 through 1992) pilot program under which it would (a) provide monkeys to no more than 20 veterans who have service-connected disabilities rated 50 percent or more disabling and are quadriplegic, (b) provide dogs that are so trained (known as "service dogs") to up to ten such veterans, and (c) facilitate the provision of such moneys to up to 20 other veterans who are quadriplegic.

Background

For veterans with high-level quadriplegia, who have lost the use of their legs and much or all of the use of their hands and arms, an assistive monkey or service dog can provide much needed state-of-the-art assistance. Individuals with quadriplegia who live at home typically require 4 to 6 hours of relatively intensive human assistance per day. These individuals usually receive this care from a family member or a paid personal-care attendant. As for the rest of their day, unless they are among the few who are able to afford the great expense of attendant care for the whole day or have family members who are able to spend their days with them, quadriplegic persons simply do without. Without assistance, such tasks as picking up their mouthstick (which they use for turning pages, dialing phones, and many other tasks) if they drop it eating and drinking cannot be accomplished. In short, without anyone to help, many of their needs go unmet.

Having observed a quadriplegic friend deal with the lack of ability to accomplish these tasks for himself, Dr. M.J. Willard of Boston University decided to train Capuchin monkeys, commonally known as "organ grinder" monkeys, to provide these services. In the past, these small, friendly monkeys were provided to Dr. Willard's program, called Helping Hands, Inc., by a private breeding farm in Florida. Recently, the Disney organization has established a special breeding colony at Epcot Center in Orlando, Florida, thereby making a substantial commitment, both philosophically and monetarily, to Dr. Willard's program.

When the monkeys are 6 to 8 weeks old they are placed with a carefully selected human family for socialization. The foster family must make a three-year commitment to raising, and spending a tremendous amount of time with, the monkey. Currently 63 families are raising young monkeys and another 100 families have been cleared to be foster parents.

After the socialization of the monkey, the monkey participates in a 6 to 9 month training period during which time the monkey is taught nine common behaviors. Once a placement decision is made, the monkey is then taught six or seven new behaviors unique to the individual's needs.

The monkey is then taken to its new owner, who is trained in how to utilize the monkey. This placement procedure is the most costly part of acquiring a monkey and is estimated to cost $6,000 per placement. According to Dr. Willard, methods to bring down the cost are being developed and are planned to be implemented in the near future. They include having the necessary equipment (reward and punishment equipment, as well as a laser beam used to direct the monkey) installed on the quadriplegic's wheelchair before the trainer arrives, using videotapes to familiarize the recipient with working with the monkey, using student trainers, and having a support person in the community to help with the training.

Once the assistive monkey is at the recipient's home, it performs a variety of tasks, including retrieving a fallen mouthstick and putting the correct end in the owner's mouth, retrieving food or drink from the refrigerator and bringing it to its owner, putting a selected book on the reading stand, putting a selected cassette, audit or video, in the cassette player, and turning lights, radios, and television sets on and off. In addition to giving the disabled person added independence, the monkey also serves as a companion and as a bridge between its owner and other persons, who are often fascinated by the monkey and, as a consequence, interact more readily with its owner. Service dogs provide some similar services, and although the dogs lack the dexterity of the monkeys, some veterans may find it preferable to have a canine, rather than a simian, aide.

Because of the extensive process involved from birth to placement, and the newness of the program, the costs are high, and the number of monkeys available are few. The cost per monkey ranges between $11,700 to $21,000 depending on the number of monkeys placed each year. At the Committee's June 16 hearing, Dr. Willard testified that six monkeys will be ready to be placed in the next 12 months, approximately 14 in the next 12 months and 19 in the following year. In approximately five years, Dr. Willard expects to be able to place 50 monkeys a year at a cost of approximately $11,700 per monkey.

The use of signal dogs—dogs specially trained to help deaf individuals overcome their hearing impairment by alerting them through non-aural means to sounds such as a telephone, fire alarm, doorbell or a child's cry—is another method to offer assistance to disabled veterans. Although very few veterans have applied for signal dogs, the VA's authority to provide them seems to be unclear.

When the Committee began to consider legislation to provide assistive animals, it quickly became apparent that there existed a puzzling, in terms of the lack of uniformity and consistency, array of variations in the circumstances in which the VA may provide veterans with various types of medical and assistive devices and related services.

On May 24, 1988, the Committee received a submission from the VA's General Counsel, in response to a Committee request, setting forth detailed information and analyses regarding the array of eligibility requirements for medical and other assistive devices. In the Committee's review of this submission and through various discussions with the VA, it became apparent that there is some conflict as to whether the VA currently has the authority to provide signal dogs to either service-connected or non-service-connected hearing-impaired veterans. In August of 1967, the General Counsel issued an opinion which seems to support the view that the VA has authority to provide signal dogs to both categories of hearing-impaired veterans. In more recent opinions, however, the General Counsel has taken the position, specifically with regard to assistive monkeys and dogs which provide primarily companionship, that the VA does not currently have such authority to provide any assistive animals other than the authority in section 614(b) of title 38 to provide guide dogs for blind veterans who are entitled to service-connected disability compensation.

The General Counsel is conducting a thorough review of this conflict.

Witnesses at the Committee's June 16 hearing testified in general support of programs to provide disabled veterans with assistive animals. The VA endorses the concept of a pilot program for providing monkeys but would prefer this authority to be discretionary rather than mandatory. The VA opposes the pilot program for providing signal dogs.

Committee bill

The Committee believes that assistive animals can add significantly to the quality of a disabled individual's life and that the VA should be on the frontline of innovation with respect to the rehabilitation of and assistance for severely disabled veterans.

Hence, the Committee bill would provide for the conduct of two four-year pilot programs as described above. Priority would be given to furnishing monkeys and dogs to veterans with sevice-connected quadriplegia, but only veterans determined by the Administration to be well-suited for the care and effective use of the monkey or the dog would be eligible to receive them. The Administrator would be expressly authorized to reimburse providers of the monkeys being furnished at VA expense, with reimbursement for training costs incurred and to make advance payments under terms and conditions that would protect the interests of the Federal Government. Ownership of the animal would be determined by a contract between the veteran and the provider. An evaluation of the first three years' experience under the program would be required—with a report to the Committees on Veterans' Affairs due by February 1, 1992—in order to determine the cost and cost-effectiveness of providing the animals and the nature and extent of the benefit to the veterans and their effect on primary caregivers. A similar program for providing dogs specially trained to assist persons who are deaf (known as "signal dogs") would be required if the VA determines that it does not currently have authority to provide them.

Because of the many questions that exist with regard to this type of program, the Committee bill requires a pilot program for providing these animals. These issues include, but are not limited to: the actual benefits to be gained by the use of a monkey; the demand by veterans for monkeys; the ability of Helping Hands both to provide the monkeys in the quantity needed to meet that demand and to assist the veterans in learning to use the monkeys; the effect, if any, that the provision of monkeys should have on aid and attendance allowances, the ability of veterans to recruit and retain paid caretakers, and the effect on the morale of the unpaid caretakers; the arrangements that need to be made for the care of the monkeys when the veteran is hospitalized; and the best method for handling a situation in which the placement of the monkey did not work out, from either the veteran's or from Helping Hands' point of view.

In addition, in these times of severe budget constraints, the Committee believes it is very important to consider the cost-effectiveness of any new benefit. Thus, before making an open-ended commitment of scarce resources to this innovative program, the Committee believes further information is needed.

Regarding the requirement that the VA, if it determines that it lacks the authority to provide signal dogs to veterans, conduct a similar pilot program for the provision of such dogs, the Committee notes that the similar evaluation and reporting requirements would apply to this program as well.

The Committee bill would specifically allow—in an effort to ensure that funding is avaialble for, and recognizing the substantial cost involved in, bringing the monkeys through the process from birth to training to placement—the VA to reimburse the provider of the monkeys for training costs incurred and to make advance payments under terms and conditions that would protect the interest of the United States Goverment. In addition, with respect to the provision specifying that ownership of the animal would be determined by a contract between the provider and the veteran, the Committee notes that the contract could vest title to the monkey permanently in the veteran or, if the VA consented, could provide for VA to retain title, and provide payments for retraining even after the termination of the pilot program).

The Committee notes that the Committee bill would provide eligibility to veterans with service-connected disabilities rated 50-percent or more disabling who who are quardriplegic but those quadriplegia is not service connected in order to provide sufficient lattitude to the VA to select veterans appropriate for participation in the program.

Part C—Health-Care Personnel

Recruitment and Retention of Health-Care Personnel Overview

Sections 621 through 625 of the Committee bill, described in detail below, relate to the recruitment and retention of health-care personnel within VA facilities. The Committee continues to be most concerned about the shortages of health-care professionals currently being experienced by the VA.

Title III of S. 9 as reported by the Committee on November 6, 1987, contained provisions relating to recruitment and retention of health-care professionals. Subsequently, these and other measures pertaining to recruitment and retention strategies, with modifications, were included in title II of H.R. 2616 as enacted into law on May 20, 1988 (Public Law 100-322). A detailed history of recruitment and retention problems leading up to these actions can be found in the Committee report accompanying S. 9 (S. Rept. No. 100-215, pages 150-161).

Since the time that the vacancy and turnover statistics cited in the Committee report on S. 9 were gathered and reported by the VA's Department of Medicine and Surgery (DM&S) in the study entitled "1986 Survey of Health Occupational Staff", generally the staffing situation within VA health-care facilities has worsened. Figures from an April 29, 1988, DM&S report, entitled "1987 Survey of Health Occupational Staff", make clear that both the 1987 turnover and vacancy rates have increased for registered nurses (RNs), licensed practical nurses (LPNs), occupational therapists (OTs), and, although the turnover rates have decreased somewhat for pharmacists and physical therapists (PTs), the vacancy rates for these positions remain critically high.

According to the 1987 report, the 1986 nationwide turnover rate for RNs was 16.1 percent and the 1986 nationwide vacancy rate—i.e., the percentage of authorized but unfilled positions—for this group was 1.6 percent. The 1987 DM&S report places those figures at 22.2 percent (an increase of 6.1-percentage-points, or 37.5 percent) and 4.6 percent (an increase of 3-percentage-points, or almost 300 percent), respectively. In States in which the VA operates hospitals (it has none in Alaska or Hawaii), the 1987 turnover rates ranged from a high of 36.6 percent in Connecticut to a low of 7.3 percent in Vermont. The 1987 vacancy rates ranged from a high of 30.6 percent in Vermont to a low of 0.8 percent in Mississippi and Texas. Over 27 percent of all VA facilities reported that the number of RN vacancies "severely" affected their operations.

The 1986 turnover rate for LPNs was 18.9 percent and the vacancy rate was 8.4 percent. The 1987 study places those figures at 30.3 percent (an 11.4-point, or 60 percent, increase) and 10.6 percent (a 2.2-point, or 26 percent, increase), respectively. The highest 1987 turnover rate in a state with a VA hospital was experienced in Maine, 63.6 percent, and the lowest rate was in Idaho, 4.8 percent. The highest 1987 vacancy rate was reported in New Hampshire, 46.3 percent, and the lowest rates were in Idaho, zero percent, and Arizona, 0.7 percent. Almost 13 percent of all VA facilities responded that their operations were severely affected by LPN vacancies.

For pharmacist positions, 1986 figures showed a 22.6-percent turnover rate and 8.6-percent vacancy rate nationwide; the 1987 study reports a 20.1-percent turnover rate (a 2.5-point, or 11 percent, decrease) and a 7.4-percent (a 1.2-point, or 16 percent, decrease) vacancy rate. The highest turnover rate in a state with a VA hospital was Kansas, 44 percent, and no turnover was reported by facilities in Delaware, Idaho, Iowa, Nebraska, South Dakota, Vermont, and Wyoming. The highest vacancy rate was reported by facilities located in Georgia, 41.5 percent, and no vacancies were reported in the facilities responding as having no turnover. Nearly 22 percent of VA facilities reported that their operations were severely affected by these high vacancies.

For PTs, a 22.6-percent turnover rate and a 24.3-percent vacancy rate existed nationally in 1986 and a 24.5-percent (a 1.9-point, or 8.4 percent, increase) turnover rate and a 23.9-percent (a 0.4-point, or 1.6 percent, decrease) vacancy rate were reported for 1987. The highest 1987 turnover rate was reported in Michigan, 140 percent. No turnover was reported in 11 states and Puerto Rico. The highest vacancy rate, 88.9 percent, was reported in New Jersey. Over 40 percent of VA facilities responded that vacancies were severely affecting operations.

For OTs, a 23.4-percent turnover rate and a 13.7-percent vacancy rate were reported in 1986, and rates of 26.2 percent (a 2.8-point, or 11.9 percent, increase) and 13.5 percent (a 0.2-point, or 1.4 percent, decrease), respectively, in 1987. Facilities in Vermont, South Carolina, and the District of Columbia reported a 100-percent turnover rate in 1987, and facilities in 9 states and Puerto Rico reported no turnover. The highest 1987 vacancy rate was 66.7 percent reported in the District of Columbia. Over 26 percent of VA facilities reported that vacancies severely affected their operations.

Appointment of Veterans' Administration-Trained Personnel

Section 621 of the Committee bill, derived from S. 2394, and section 4 of S. 2462, would (a) amend section 4106 of title 38 to authorize the VA to hire, without regard to the Civil Service examination and register processes, VA-trained health-care professionals other than physicians, dentists, and nurses during the first year after their graduation.

Background

As part of the VA's mission to establish and implement education and training programs for health-care disciplines, VA health-care facilities provided training opportunities for tens of thousands of students each year—over 100,000 students in 1986. At the time of graduation, many of these students turn to the VA as a potential employer. Persons in those professions who are not covered under the VA's title 38 appointment authority—generally, health-care personnel other than registered nurses, physicians, and dentists—are required to complete the time-consuming process of examinations and register listings prescribed for the Civil Service competitive system. This process justifiably focuses on the preservation of merit principles for filling vacancies rather than on the need to appoint much-needed health-care personnel in an expedited fashion. Unfortunately, this often results in graduates whom the VA would like to employ seeking and accepting employment elsewhere.

The shortage of health-care professionals has created a competitive environment in which hospitals and other health-related employers are actively recruiting capable employees. Private-sector employers are offering potential applicants immediate employment with very attractive salaries and benefits. The VA, as previously noted, is having difficulty keeping up in these latter areas and the complex, lengthy Civil Service application and acceptance process adds to the burden. A 1986 VA study found that fewer than 6 percent of students take jobs with the VA facility where they received their clinical training.

S. 2394 and Section 4 of S. 2462 were generally supported and received no opposition at the Committee's June 16 hearing.

Committee bill

Section 621 of the Committee bill would amend section 4106 of title 38 so as to add a new subsection (h) which would (a) authorize the Administrator to appoint recent graduates with recognized degrees or certificates from an accredited institution in a health-care profession or occupation who received their clinical training at VA facilities to positions at those facilities without regard to the Civil Service examination and register processes and (b) require the Administrator to apply the principles of preference as set forth in subchapter I of chapter 33 of title 5 for the hiring of veterans and certain persons.

In proposing this new authority, neither the Committee nor the Administration intends that principles of the merit process—or of veterans' preference—be ignored, nor do they intend that other screening procedures to ensure the hiring of a high quality personnel be bypassed. However, because these graduates have completed a course of education with a practicuum at a VA health-care facility, supervisory personnel at the VA will have had an opportunity to assess and evaluate their work in a clinical setting, and thus be expected to know far more about the applicant's clinical competencies than they do about other applicants.

A further benefit to the VA from hiring persons who have been recent students in VA facilities is the savings in recruitment and orientation costs, which can amount to several thousand dollars per employee.

Approval of Special Rates of Pay

Section 622 of the Committee bill, derived from section 5 of S. 2462, would amend section 4107(g)(4) of title 38, so as to (a) reduce, from 90 to 45 days, the period, after VA submission of a title 5 health-care employees' special-pay rate request, in which the President or his agent may disapprove the proposed rate, and (b) clarify that the proposed rate may be put into effect immediately upon approval given in a shorter period.

Background

Under current law, when the Administrator determines it to be necessary in order to obtain or retain the services of certain personnel employed under the title 5 personnel system who provide direct patient-care services or services incident to direct patient care, the Administrator may increase the rates of basic pay authorized under applicable statutes and regulations. In such cases, the Administrator is required to notify the President not less than 90 days prior to the effective date of the proposed increase. The President then has that 90-day period to disapprove the proposed increase and, if so doing, the President must notify the appropriate committees of the Congress of the reasons for such action.

Requests to establish special pay rates are initiated at VA Medical Centers and are submitted to the VA Central Office (VACO). Such a request would include data showing that an increased rate is necessary to deal with an inordinately high vacancy or turnover rate for a particular category of personnel and that the increase is necessary either to provide pay in an amount competitive with—but not exceeding—the pay of the same category of personnel at non-Federal facilities in the same labor market, to achieve adequate staffing, or to recruit personnel with specialized skills. The gathering of such data and the development of a persuasive document for VACO review takes one month or longer. Once submitted to VACO, the justification for the special rates is carefully reviewed and either approved, returned for further information, or disapproved. According to a recent VA survey of 42 cases in which rates became effective in May 1988, the lag time between VACO receipt and approval ranged from 17 to 138 days, with both the median and mean being 52 days.

A review conducted by the Director of the VA's Office of Personnel and Labor Relations at the Committee's request showed that between January 1, 1987, and January 30, 1988, 233 special-rate authorizations were subject to review by the President's agent, the Director of the Office of Personnel Management (OPM). Of these, the mean required for OPM approval was 42 days and the median was 33 days. Nearly half, 101, were approved in 30 days or less, 77 were approved in 31 to 60 days, and 55 took 61 to 90 days. OPM has never disapproved any special-rate authorization proposed by the VA under section 4107(g).

The Committee is concerned that the lengthy pre-approval process—during which time the VA facility is already experiencing a staffing shortage—may serve to worsen the staffing problem. Staff may become overworked and frustrated and thus seek to leave the organization. This, of course, creates an even greater shortage and may cause the care furnished veterans to suffer.

Section 5 of S. 2462 was generally supported (including by the Administration) and received no opposition from those who testified on this subject at the Committee's June 16 hearing.

Committee bill

Section 622 of the Committee bill would reduce—from 90 days to 45 days—the amount of time given the President to disapprove the Administrator's decision to provide a rate increase. The bill further provides, consistent with current practice under existing section 4107(g)(4), that the special rate may be put into effect immediately if approval is granted before the deadline expires.

Health Professional Scholarship Awards

Section 623 of the Committee bill would amend section 4312(b)(5) of title 38 to require the Administrator to ensure an equitable allocation of scholarships to persons enrolled in their second year of a program leading to an associate degree in nursing.

Background

The Health Professional Scholarship Program was established by the enactment of Public Law 96-330, on August 26, 1980, to assist in the provision of an adequate supply of physicians and nurses for the VA and the Nation and, if needed, of certain other health-care professions. As originally enacted, the legislation required the Administrator to give priority in awarding scholarships to those individuals who had previously received scholarships under the Scholarship Program. These provisions remained unchanged until this year.

Section 326 of S. 9 as reported by the Committee on November 6, 1987, and, as subsequently amended in the Senate-House conference report on H.R. 2616 (H. Rept. No. 100-578), required the Administrator to give priority to the scholarship applications of individuals entering their final year in a course of training. This provision was enacted in section 216 of Public Law 100-322 on May 20, 1988. Although not explicitly set forth in the Explanatory Statement accompanying the conference report on H.R. 2616, the conferees' intention was that the Scholarship Program be made available to students, particularly nursing students, enrolled in an Associate degree program.

Since the inception of the Scholarship Program, the VA has awarded scholarships only to nursing students enrolled, or accepted for enrollment, in the "upper division", i.e., their junior or senior year, of a baccalaureate program or pursuing a course of education leading to a master's degree in nursing. On May 12, 1988, Senators Cranston and Murkowski wrote to the VA's CMD to encourage him to extend the nursing scholarship program to student nurses in the second year of an associate degree program. The CMD, in his June 10, 1988, response, stated that, because of an overwhelming response to the scholarship program—over 1,600 applications for approximately 260 scholarships—the VA was limiting scholarships to awards at the baccalaureate and master's degree level.

Committee bill

Section 623 of the Committee bill would require the Administrator to ensure that an equitable number of scholarships be awarded to students enrolled in an associate degree (AA) program leading to a nursing degree. The Committee is very concerned about the continuing shortage of nursing personnel, as discussed elsewhere in this report, and believes that all efforts should be made to recruit such personnel expeditiously. Although the Committee strongly supports baccalaureate education for nurses, particularly in today's complex health-care environment and, thus, believes that priority should be given to nurses working on completion of a baccalaureate degree, the Committee is concerned that some communities do not have readily accessible 4-year programs. Persons in such areas who are interested in nursing as a career and are unable to attend without some financial support would therefore be precluded from obtaining such VA assistance. The Committee believes the VA should include AA nurses and hence has proposed in the Committee bill that an equitable allocation of scholarships be required for such students.

Assistance to Health-Personnel Educational Institutions

Section 624 of the Committee bill, derived from section 8 of S. 2462, would (a) amend subchapter III of chapter 82 of title 38—relating to a program of VA grants to provide assistance in the education of health-care personnel, other than physicians and dentists, at VA-affiliated schools and to assist in developing and evaluating new health careers, interdisciplinary approaches, and career-advancement opportunities—to add a new section 5094 which would (1) authorize the appropriation of $5 million for each of fiscal years 1989 and 1990 and $6 million for each of fiscal years 1991 and 1992 for the VA to reinstitute the program; and (2) provide for the funds to remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated; (b) amend section 5091 of title 38, describing the purposes of grants under the subchapter III program, so as to require that the development of those careers, approaches, and opportunities described above must occur in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved; and (c) amend section 5096 of title 38, relating to expenditures for certain VA health-personnel education purposes, to authorize the VA to expend up to 10 percent of each year's appropriation under new section 5094 on VA programs (described in current section 5096(2)) designed to develop or initiate improved methods of education and training for health-care personnel.

Background

In response to a shortage of physicians and other health-care professionals in the early 1970's, Public Law 92-541 enacted chapter 82 of title 38. This chapter provided programs which authorized appropriations over a seven-year period (fiscal years 1973-79) for a pilot program of assistance in the establishment of 5 new State medical schools and over a 10-year period (fiscal years 1973-82) (Subchapter I) and for a program of grants to affiliated medical schools (Subchapter II). These programs were generally successful in providing the monetary support needed to expand and improve the Nation's capacity to train physicians. As a result of those efforts and others, it is generally believed that the United States has adequate numbers of physicians to meet its health-care needs.

Under subchapter III of chapter 82, entitled "Assistance to Public and Nonprofit Institutions of Higher Learning, Hospitals and other Health Manpower Institutions Affiliated with the Veterans' Administration to Increase the Production of Professional and

Other Health Personnel", 135 grants and 3 supplemental grants—totalling $47.9 million—were awarded during fiscal yearas 1974 through 1985. The provisions of subchapter III authorize the VA to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, and other schools of higher learning and nonprofit health manpower institutions affiliated with the Veterans' Administration designed to coordinate, improve, and expand the training of health-care professionals and technical workers. Grants under this subchapter involved a broad range of professional disciplines, from physical therapy to nursing to medical record librarian, were made in 40 states, the District of Columbia, and Puerto Rico, and were regarded as successful in meeting their stated goals.

According to a December 1985 VA report entitled "Activities Carried Out Under the Veterans Administration Medical School Assistance and Health Manpower Training Act of 1972: Ninth Annual Report to the Congress of the United States", all but seven of the programs which received grant funds continued upon termination of the grant. As one example of a continuing program, which was expanded to cover other nearby VA facilities, is a program conducted in cooperation with the Southern California College of Optometry. This grant permitted establishment of an optometric teaching/treatment unit at a VA outpatient facility. In the 1985 VA report, this program was described as very popular with both patients and staff and as providing services not previously available.

The VA spent a total of $1.1 million under one provision of subchapter III—section 5096—which authorizes the use of up to 30 percent of the grant appropriations for the repair, remodeling, or expansion of VA facilities to provide for a suitable educational environment or for VA efforts to develop improved methods of health personnel training. Almost all of these funds were expended on physical structures and equipment.

Serious shortages continue to exist in many categories of health-care personnel, and the numbers being trained are not sufficient. In 1986 there was a 13.4-percent decrease in nursing school enrollments over the previous two academic years. The trend in nursing school enrollments between 1986 and 1987 showed a further decline. Overall, there was a 6-percent decrease in nursing school enrollments over this period, with a 9.8-percent decrease in programs leading to a Bachelor of Science degree; a 1-percent drop in programs leading to an Associate degree; and a 20- percent drop in diploma enrollments. This last element is thought to be a result of closings of hospital-based programs where diplomas are conferred. Additionally, there are also reports that programs leading to other health-care careers are experiencing similar declines.

Several schools of nursing have successfully implemented creative methods for increasing enrollments, but they need further funding either to expand their programs or to lower costs so that more persons can take advantage of them. As an example, the University of San Francisco School of Nursing has a 15-month program under which a student with a bachelor degree in a field other than nursing can earn a Bachelor of Science degree in nursing. "Second-career" students such as these frequently have families or other responsibilities which prevent them from being able to afford the tuition fees and other costs involved in returning to school. A witness from the American Association of Colleges of Nursing told the Committee at its June 16, 1988, hearing that assistance to schools which would allow them to decrease their tuition costs would encourage increased enrollments.

At the Committee's June 16, 1988, hearing, favorable testimony was received in support of section 8 of S. 2462. Representatives of nursing organizations—such as the Nursing Association of the Veterans' Administration (NOVA) and the American Nurses Association (ANA)—endorsed the concept, but cautioned against the creation of new levels of health care workers which might provide duplicative and costly services.

Although the VA was not prepared to support this measure at the June 16 hearing, Dr. Daniel Winship, Associate Deputy Chief Medical Director, stated in response to oral questioning that the program previously authorized had been a success and that he personally felt it would again be successful.

Committee bill

Section 624 of the Committee bill would (a) authorize the appropriation of $5 million for each of fiscal years 1989 and 1990 and $6 million for each of fiscal years 1991 and 1992 for the purposes described in subchapter III of chapter 82 of title 38, (b) direct the Administrator, when establishing new careers, interdisciplinary approaches, and career advancement opportunities, to collaborate with the professions the members of which are currently responsible for carrying out those duties, (c) require that sums appropriated remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated, and (d) authorize the VA to expend up to 10 percent of each year's appropriation on VA programs designed to develop or initiate improved methods of education and training for health-care personnel.

It is the Committee's intent that, in the case of each grant, the VA obligate in any fiscal year only such funds as the school requires for that year rather than obligating in the fiscal year in which the project is approved the total sum required by the school for the life of the project. Although the Committee is sympathetic to the need of schools to be assured of full funding throughout the expected life of the grant, it desires that as many programs as possible be implemented so as to address more quickly the VA's critical health personnel shortages.

In order to ensure that new careers—developed under this provision—do not lead to fragmentation and duplication of care or to a deterioration in the quality of care if appropriate licensure, registration, or supervisory requirements are not established and enforced, the Committee bill would explicitly require that the development and evaluation of new health careers, interdisciplinary approaches, and career advancement opportunities with grant assistance be accomplished in collaboration with the professions whose members are currently responsible for carrying out those duties.

The Committee believes that educational facilities are the best-equipped and most experienced in the process of teaching new health-care workers but recognizes that personnel within VA facilities may also have valuable new ideas and approaches for educating and training such workers. The Committee encourages creative efforts in this area as well. Therefore, up to 10 percent of each year's appropriation for the grant program could be used for BA programs which are considered to be of exceptional quality and which meet the needs of the VA in ways which non-VA institutions are unable to match. However, since it is no longer necessary for the VA to repair, remodel, or expand their facilities to provide suitable education space in order to carry out such innovative projects, the Committee bill would repeal this authority.

Pilot Program of Pay and Personnel Management Practices

Section 625 of the Committee bill, which is derived from section 9 of S. 2462, would (1) require the VA during calendar years 1989, 1990, and 1991 to conduct a pilot program at not less than five VA medical facilities to determine the desirability of (a) establishing programs which foster interdisciplinary professional collaboration and collegial relationships between physicians and RNs, (b) expanding the administrative and supervisory responsibilities of the position of Chief of the Nursing Service, (c) creating new alternatives for utilizing the skills and knowledge of RNs in furnishing direct-patient care, (d) increasing the pay differential for evening and night service, (e) revising the grade, classification, pay, and performance qualifications and other appropriate personnel management systems used in DM&S, and (f) establishing flexible employment benefits programs for DM&S employees; (2) repeal the report required by section 231 of Public Law 100-322; and (3) require periodic reports on the pilot program by the CMD to both Committees on Veterans' Affairs, followed not later than 60 days thereafter by the Administrator's comments on each such report.

Background

Prior Legislation—Section 332 of S. 9 as reported by the Committee on November, 6, 1987, required the VA to study and report on various issues related to enhancing VA's recruitment and retention of health-care personnnel. Issues relating to pay practices, scheduling, and recognition of employees' worth were to be examined. Further background on this provision is provided in Senate report 100-215 on pages 159-161. On December 3, 1987, during Senate consideration of S. 9 the Senate adopted a Committee amendment to require the VA, rather than simply to study and report on the various management and pay practices, to carry out instead a pilot program through which these practices might be tested. This amendment also added a requirement to include in the pilot program a study of the effects of increasing the scope of responsibility of the Chief of the Nursing Service within the VA. Subsequently, this measure was modified in the conference report on H.R. 2616/S. 9 (H. Rept. No. 100-578) to require the Administrator to study and report on the possible effects of pay compression, increased pay differential for evening- and night-tours of duty, and flexible benefits programs within the VA medical centers but not to include the pilot-program provision. The amended provision was enacted on May 20, 1988, as section 231 of Public Law 100-322. Because the

Committee remains convinced that such a pilot program is desirable, it is proposing it again as part of this bill.

Pay and Personnel Management Concerns

Pay Compression.—When a pay system is partially adjusted rather than reviewed as a whole, ranges of pay between new and more senior employees or between staff and supervisors may narrow. This phenomenon—known as pay compression—has the potential to create dissatisfaction among senior employees and supervisors, eventually causing them to leave the organization.

Pay Differentials.—Because furnishing care in medical facilities is a 24 hours-a-day, 7 days-a-week function, employees must be scheduled to work at times that are generally viewed as undesirable. Because the majority of workers chose to work Monday through Friday during regular daylight hours, employers frequently pay premium wages in order to attract workers to other shifts or to work at less desirable times. Currently, DM&S is required, under section 4107(e)(10) of title 38, to pay premium wages to nurses and other designated health-care employees at a rate equal to 10 percent of an employee's hourly rate of basic pay if at least 4 hours of the tour of duty fall betwen 6 P.M. and 6 A.M.

If the Administrator determines that it is necessary to do so in order to obtain or retain the services of nurses, current section 4107(e)(10)(B), authorizes that rates of additional pay, including this evening- and night-shift differential, be increased in order to provide nurses and other designated health-care employees an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses and other employees at non-Federal health-care facilities in the same geographic area as the VA facility.

Collaborative Practice Committees.—One of the most significant complaints lodged by nursing professionals is that hospital administrators and physicians fail to appreciate or make appropriate use of their skills or give them autonomy over their clinical practice.

One approach to addressing this concern is collaborative practice programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, nurses, and other direct health-care providers. These programs have been shown to enhance personal job satisfaction for both nurses and physicians.

A July 1987 preliminary VA report, entitled "Task Force on Recruitment and Retention of Non-Physician Health Care Workers", states "[T]here is much room for improvement among our physician and nursing staff in their attitudes and dealings with each other and with our other health care workers."

Flexible Benefits Programs.—Flexible benefits programs, often referred to as "cafeteria style" benefits, offer employees a choice among types of health insurance, disability insurance, child care, annual leave, sick leave, and other benefits which are paid for in whole or in part by the employer. In testimony before the House Subcommittee on Government Operations on March 1, 1988, Constance Horner, Director of the Office of Personnel Management stated "OPM is extremely interested in these developments [flexible benefits] because we understand that if we are to staff the federal agencies successfully in coming decades, we must offer types and levels of benefits that are competitive with those available in other sectors. . . . Since they [benefits] affect the lives and welfare of millions of people, changing them in any fundamental way should be the result of a cautious, deliberative process".

Recent forces within the health-care environment such as the prospective payment system for Medicare enacted in 1983 in Public Law 98-21 have generated pressures for organizational restructuring. This change created strong incentives for private-sector hospitals to decrease the cost of care they provided and to examine the feasibility of reducing their administrative costs by cutting back on the employment of supervisors and other management personnel. Thus, hospital administrators increased the scope of responsibility for nursing administrators to include services other than nursing, such as housekeeping, central supply services, and pharmacy, and responsibility for clinical services such as physical therapy, vascular laboratories, and speech therapy.

As to the VA, the management configuration at VA medical centers is generally as follows: The Director is accountable for the operation of the total facility and delegates major responsibilities to two key individuals, the Chief of Staff and the Associate Director. Reporting to the Chief of Staff, who is responsible for clinical activities, are the Chiefs of Clinical Services such as the Chief of Medicine, the Chief of Surgery, and the Chief of the Nursing Service. The Associate Director is primarily responsible for administrative and support services, such as the fiscal office, medical administrative services, and the pharmacy. This structure has remained unchanged for many years.

VA nurses have frequently indicated dissatisfaction with the fact that they are required to assume the responsibilities of others and, as a result, are not left with adequate time or resources to provide direct care to their patients. The DM&S July 1987 "Task Force on Recruitment and Retention of Non-Physician Health Care Workers Preliminary Report" stated that the inadequacy of support services to VA professional health-care workers in nursing units, and other work sites, was widely recognized. The Nurses Organization of the Veterans' Administration (NOVA) has indicated in a letter delivered to the Committee on May 27, 1988, that urgent attention should be paid to implementing support services such as computerized data entry, unit dose, and pharmaceutical delivery to the nursing units, services which otherwise must be provided by nursing staff and, thus, detract from the time spent with patients.

A few VA facility directors have attempted innovative management restructuring involving the Chief of the Nursing Service. For example, at the San Diego VAMC, a pilot effort was undertaken in which additional responsibilities were delegated to the Chief Nurse.

Several organizations have begun to explore and research alternatives for restructuring the role of RNs so as to utilize their skills and knowledge in ways that provide for enhanced job satisfaction and thus help to eliminate the current and foreseen shortages of RNs.

At the Committee's June 16, 1988, hearing witnesses generally expressed support for the pilot program provisions in S. 2462. The VA testified in support of this provision and requested additional statutory authorities to broaden the ability to test various pay practices which particularly affect pay compression and flexible benefits.

Committee bill

The Committee bill would (1) require the VA during calendar years 1989, 1990, and 1991 to conduct, and submit periodic reports on, a pilot program at not less than five VA health-care facilities to determine the desirability of implementing various pay and management practices relating to the recruitment and retention of RNs and other scarce health-care professionals, (2) provide the VA with the authorities to utilize flexible employee benefits and to revise the grade, classification, pay, and performance qualifications and other appropriate personnel management systems used in DM&S as part of this program, and (3) repeal the overlapping pilot-program provision in section 231 of Public Law 100–322.

The Committee believes that it is important to study and evaluate all issues relating to the possible enhancement of VA recruitment and retention efforts. Management studies have shown that salaries and benefits alone will not attract and retain employees; and environment in which employees feel they are recognized for their contributions and permitted input into the decision-making process is also a significant factor. Va officials also appear to have recognized this fact, as evidenced in the following statements made in the July 1987 report of the "Task Force on Recruitment and Retention of Non-Physician Health Care Workers Preliminary".

> Management attitudes and actions can play a crucial role in establishing an environment conducive to recruitment and retention of the scarce category worker. Both tangible and intangible products of management are vital.

The Committee concurs with a statement by the American Nurses Association (ANA) in a June 22, 1988, response to post-hearing questions submitted by Chairman Cranston, that the VA Nursing Service should have the flexibility to choose and request appropriate nursing demonstration projects. The Committee generally has much confidence in and respect for the VA's nursing leadership and, in that regard, directs the CMD, when conducting the pilot program, to provide the Nursing Service with flexibility, within the scope of legislation, in determining innovative and creative alternatives for utilizing an RN's skills and knowledge.

With specific reference to the VA's authority to increase premium pay rates so as to enhance the VA's ability to recruit and retain nurses and other scarce health-care employees, the Committee urges the VA to make more creative and imaginative use of the authorities provided in section 4107(e) of title 38 in order to enable the VA to meet the competitive challenge it faces. Section 4107(e)(10)(A) stipulates that the Administrator may increase the rates of additional pay authorized by section 4107(e)(2) through (8) if the Administrator determines it is necessary to do so in order to obtain or retain the services of nurses. Section 4107(e)(10)(B) authorizes that those increases in rates may be made at any VA health-care facility in order to provide nurses additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as a specific VA health-care facility or on a nationwisde or other geographic basis.

Prior to December 30, 1987, a VA facility Director who identified the need to change premium pay rates was required by VA regulation to request the Administrator's approval. On that date, DM&S Circular No. IL 10B-87-15 was issued which delegated to Medical Center Directors the authority to approve higher-than-standard rates of premium pay. Through May 31, 1988, the most recent date for which information is available, the authority in section 4107(e)(10) to increase premium pay has been used only 21 times. In 12 of those instances, nurses working on Saturday were paid the same differential as they would have received if they worked on Sunday; in 6 instances, the restriction on overtime rates of pay was lifted; in 2 instances, the pay differential for nurses working the evening- or night-tour of duty was increased; and, in one instance, the rate of pay for on-call status was increased for operating room nurses. The payment of the same premium rate on Saturday as is paid on Sunday is now mandated as a result of the enactment of Public Law 100-322 on May 20, 1988.

One example of a use of the authorities provided in section 4107(e)(10) of title 38 that the Committee recommends the VA pursue would enable a VA hospital to employ one of its own RNs on an overtime basis rather than having to use the services of an RN supplied by a temporary-employment agency (agency nurse) to cover those same hours. In order to achieve that result—and save the amount of overhead and profit included in the agency's charges for the services of the agency nurse—the VA should be able to pay the VA nurse working overtime up to the basic hourly rate which would be received by an agency nurse. However, in a white paper prepared by the VA at the request of the Committee, the VA claimed it lacked the authority to implement such a practice. That paper described the VA General Counsel's position that the provision of section 4107(e)(10) authorizing increases in additional pay for VA nurses in amounts "competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area" does not permit increases to match the pay of agency nurses because an agency is not a "health-care facility."

The Committee does not accept this view because it is very unlikely that a VA facility would be utilizing agency nurses if non-Federal health-care facilities in the same geographic area were not also doing so. In the Committee's view, if agency nurses are being used anywhere in the community in which a VA facility exists, the VA should have the discretion to use as a benchmark to determine a comparable VA rate the basic rate paid to those agency nurses for work in non-Federal health-care facilities.

The above is but one example of pay practices which might be implemented by the VA to offset the shortages of scarce health-care personnel it is experiencing. The Committee encourages the VA, when reviewing its authorities under section 4107, to give them broad, but reasonable, interpretations—thus making them more useful, flexible tools for enabling the agency to meet the many new, innovative, and competitive challenges it is confronting.

The Committee also encourages the VA to make greater use of increasing the rates of premium pay in lieu of increasing the rate of basic pay, if appropriate. This practice may be both more cost-effective and effective in recruiting and retaining nursing personnel.

Conversion of Non-Physician Medical Center Directors to the Senior Executive Service

Section 626 of the Committee bill, which is derived from S. 2583, an Administration proposal, would provide for the conversion of non-physician VA hospital directors from appointment under the VA's title 38 personnel system to appointment under the Senior Executive Service authority in title 5 (but allow those directors who wish to remain under the title 38 system during their service as a director to do so).

Background

In 1980, pursuant to section 105 of Public Law 96-330, non-physician VA hospital directors were converted from the title 5 personnel system to the personnel system under title 38. In the explanatory statement which was inserted in the Congressional Record during debate on the final passage of the legislation, H.R. 7102, which was enacted as Public Law 96-330 (see pages H 6852 of the July 31, 1980, Record and S 10547 of the August 1, 1980, Record), the two Veterans' Affairs Committees described the basis for this action as follows:

> The Committees believe that shifting these key personnel [non-physician VA hospital directors] into the title 38 personnel system will provide the Administrator with greater control over the selection and management of such personnel. * * *

In a similar vein, the VA, in a June 27, 1988, letter transmitting the draft legislation which was introduced as S. 2583, noted that the conversion of these directors was carried out in 1980 "while some concern remained about the impact of the SES program upon the management of executive personnel within the Department of Medicine and Surgery." However, the VA also noted that "VA experience since the 1980 exclusion has left unfulfilled the expectation that excluding the directors would enhance the agency's ability to manage them."

The VA also noted that "[a] number of anomalies have developed or become apparent" since the conversion in 1980, including pay disparities between the non-physician directors and other comparable VA executives, such as Regional Office Directors within the Department of Veterans Benefits, and a lack of flexibility in reassigning the non-physician directors to other, non-director positions within DM&S because of differences in appointment authorities.

The Committee received information that a conversion from title 38 to title 5 is generally supported by the non-physician directors themselves as well as by other top DM&S officials. Specifically, a survey taken in January 1988 by the VA Chapter of the Senior Executives Association of all DM&S Regional Directors and their Deputies and all Medical Center Directors and Associate Directors found that over 85 percent of those responding favor the conversion and that a similar percentage of the directors themselves favor this change.

Committee bill

The Committee bill would reverse the 1980 action by converting the non-physician directors from the title 38 DM&S personnel system to the SES authority under chapter 31 of title 5. The individuals so converted would become career appointees in the Senior Executive Service on the date of the enactment of the provision and would not be required otherwise to qualify for such an appointment.

The Committee bill would further provide that any person holding an appointment as a non-physician director under title 38 who wished to retain that appointment would be able, not later than 60 days after the date of enactment, to elect to retain that appointment for such period as the individual continued to serve as a director, at either the VA facility where he or she was then serving or at any subsequent facility so long as there was no break in service as a director.

Finally, the Committee bill protects existing pay levels by expressly providing that a conversion under this provision may not result in the reduction in the pay of any individual.

Disciplinary Actions and Grievances

Section 627 of the Committee bill, which is derived from section 6 of S. 2462, would amend section 4110 of title 38 so as to provide that the procedures set forth in title 5, United States Code, for the resolution of specified lesser disciplinary actions (admonishments, reprimands, suspensions of 14 days or less, and transfers not involving loss of grade) would be used in cases involving title 38 personnel (including, in the case of employees who are members of recognized bargaining units, the use of a negotiated grievance procedure involving an appeal to an arbitrator). This section would further amend chapter 73 of title 38 so as to create, in title 38, for both represented and unrepresented employees, a grievance-resolution process that parallels that available to title 5 employees.

Background

Due, in substantial part, to concerns raised by the VA and groups representing VA employees about the fairness and timeliness of disciplinary actions and grievance procedures under title 38, the Committee last year favorably reported legislation to make changes in these procedures. Section 324 of S. 9 as reported by the Committee in November 1987 and passed by the Senate on December 4, 1987, in H.R. 2616 contained such provisions. The House and Senate Committees, however, were unable to reach an agreement on this issue and, thus, the provision was not included as part of the final measure which was ultimately enacted as Public Law 100-322. Further background regarding this issue is provided in the Committee's report on S. 9 (S. Rept. 100-215, pages 145-150). As was discussed in that report in significant detail, the key issue underlying this matter is the relationship between the VA personnel system under title 38 and the general civil service system under title 5.

When the VA's Department of Medicine and Surgery was established in 1946, the Congress created the separate VA personnel system (which is set forth in Chapter 73 of title 38 and VA regulations), distinct from the general civil service system, in order to provide the VA with greater flexibility in recruiting and employing health-care professionals. Current section 4108(a) gives the Administrator exclusive authority over the conditions of employment of title 38 personnel "[n]otwithstanding any law, Executive order, or regulation", and current section 4110 sets out the process by which disciplinary actions involving title 38 employees are to be conducted.

The Civil Service Reform Act (CSRA), Public Law 96-454, enacted in 1978, granted other federal employees significant new rights to negotiate with regard to the terms and conditions of their employment and to utilize new methods to resolve grievances, through negotiated grievance procedures and binding arbitration. Title 38 employees, however, remain limited by section 4108 to whatever rights the Administrator is willing to accord them and have been unable to negotiate, through the collective bargaining process, grievance procedures comparable to those available to other federal employees. Similarly, under section 4110, all disciplinary actions involving title 38 employees, however minor, must be heard by a disciplinary board of 3 to 5 employees, a trial-like adversarial process which frequently takes many months to reach a resolution and from which the only appeal available administratively is an internal VA action, with no recourse to outside judgment except in a court action. Civil service employees, on the other hand, have various methods for contesting disciplinary actions, both within and outside of their particular agencies.

Although the Federal Labor Relations Authority (FLRA) ruled in some cases that the VA was obligated to adhere to CSRA procedures, those results were all reversed on appeal to federal appellate courts.

Most recently, the U.S. Court of Appeals for the D.C. Circuit, in the case of *Colorado Nurses Association* v. *Federal Labor Relations Authority*, (No. 87-1104, July 19, 1988), reversed a prior decision of the FLRA which held that the VA has a duty under the CSRA to bargain over conditions of employment. The court ruled that the VA Administrator has exclusive discretion to establish regulations concerning the working conditions of those employees appointed under the title 38 personnel system and is, therefore, not under any obligation to bargain with such employees based on the CSRA.

The overall effect of Section 627 of the Committee bill would be to make the VA's procedures for (a) personnel actions involving title 38 employees where a specified lesser disciplinary action is proposed, and (b) the VA's procedure for resolution of grievances, equivalent to personnel procedures available to title 5 employees.

Committee bill

Section 627 of the Committee bill includes provisions that would amend section 4110 of title 38 so as to remove from the coverage of that section disciplinary actions involving certain lesser proposed penalties: Suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment. All other disciplinary actions would remain covered by the current section 4110 process.

The approach of specifying matters which would be excluded from coverage was adopted so as to be clear that any matters not specified would remain covered by section 4110. For example, because of the current VA practice of treating any proposal to remove a title 38 employee's clinical privileges as tantamount to a proposed removal, current 4110 procedures would continue to apply in such cases.

For the disciplinary matters specified in the Committee bill which involve lesser proposed penalties, the bill would provide that a title 38 employee would be entitled, in lieu of a 4110 proceeding, to a process which would include (1) advance written notice which sets forth the specific reasons for the proposed action; (2) a reasonable time to answer the notice, either in writing or orally, including time to furnish affidavits and other documentary evidence in support of the answer; (3) a chance to be represented by an attorney or some other representative; and (4) a written decision, which would include the reasons for the decision, at the earliest practicable time. These procedures are generally the same as are provided, pursuant to section 7503(b) of title 5, to all title 5 employees in such disciplinary proceedings.

The bill also would provide two methods by which title 38 employees—depending on whether they belong to recognized bargaining units or not—could gain a review of a decision on such a specified lesser disciplinary matter or of a decision on a grievance. These methods, which are equivalent to the procedures available to title 5 employees, are either—in the case of title 38 employees who are not members of bargaining units—for those employees who are members of such a unit—a negotiated grievance procedure which would include binding arbitration. In any disciplinary case involving binding arbitration, if the subject matter of the disciplinary action involved a question of the employee's clinical competence, as determined by either party, the person selected under the negotiated agreement to arbitrate the case would have to be qualified as an arbitrator and also be qualified as a physician, dentist, nurse, or be otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues. Appeals from an arbitrator's decision would be authorized to be taken to FLRA.

The Committee bill also specifies that any agency review procedure established by the Administrator with respect to proposed disciplinary actions and grievance resolution regarding title 38 employees who are not covered by collective bargaining agreements would have to include (1) an informal review of the decision on the disciplinary action by a VA official of a higher level than the official who made the original decision and a prompt decision following that review; (2) a right to have the matter reviewed further by an impartial examiner from within the VA who would have to submit a prompt report of findings and recommendations; and (3) a prompt review of those findings and recommendations, as well as any comments the employee and the agency wish to make on the findings and recommendations, by an agency official at a higher level than the one who carried out the first informal review. These procedures are generally similar to ones currently provided by the VA through internal agency guidelines.

The effort to develop the provisions in the Senate-passed measure last year and in the Committee bill this year, which have included significant consultation with many concerned parties, has been carried out with two fundamental, and sometimes conflicting, principles in mind. First, the separate title 38 personnel system for DM&S generally serves a valid and valuable purpose of permitting the VA to staff and manage a very large, complex, health-care system and, as such, should be maintained. Second, as the Congress recognized with the enactment of the Civil Service Reform Act, there can and should generally be significant opportunity for employees to have disciplinary actions and grievances related to their employment resolved in a timely fashion with an opportunity for outside review.

Because the Committee remains interested in trying to resolve the problems that were identified last year in the current DM&S disciplinary and grievance processes and procedures relating to title 38 employees, the Committee has again (with some modifications) voted its support for these provisions in the Committee bill in order to address the overall issue of the appropriate disciplinary and grievance procedures for title 38 employees. The Committee's modifications from the bill as reported last year are, first, rather than requiring that all matters involving clinical competence, regardless of the degree of discipline proposed, be resolved under the section 4110 process, the Committee bill, as discussed above, would require that a specified procedure be utilized; and, second, rather than authorizing both represented and unrepresented employees to use negotiated grievance resolution and disciplinary appeal procedures, the Committee bill would limit such options to those employees who are members recognized bargaining units.

TITLE VII—MISCELLANEOUS

Definition of Vietnam Era

Section 701 of the Committee bill, which is substantively identical to S. 2396, would amend section 101(29) of title 38 to modify the definition of "Vietnam era" for general title 38 purposes to change the starting date to include, in the case of those who served in the Republic of Vietnam, the period beginning February 28, 1961, and ending August 4, 1964 (the day before the starting date in current law).

Background

The Committee has twice reported—as section 8 of S. 2514 during the 98th Congress and as section 201 of S. 876 during the 99th Congress—and the Senate has twice passed the provision contained in section 701 of the Committee bill. However, in both instances the House of Representatives would not agree to include the provisions in the compromise agreements reached on the legislation involved.

Section 101(29) currently defines the Vietnam era, for title 38 purposes, as beginning on August 5, 1964. That date coincides with the Gulf of Tonkin incident and the approximate date of adoption of the Gulf of Tonkin Resolution by the Congress following that incident. (The action leading to this Congressional action—the reported attack by North Vietnamese gunboats on two U.S. Navy destroyers—occurred on August 4; on August 5, President Johnson sent a message to the Congress regarding the matter and a joint resolution was introduced in Congress in response thereto; and on August 7, the Congress approved the so-called "Gulf of Tonkin Resolution" which was signed into law as Public Law 88-408 on August 11, 1964.)

The February 28, 1961, date, however, has been used in other statutory contexts. For example, it is the date set forth in Public Law 89-257 after which U.S. service personnel could accept awards from the Government of the Republic of Vietnam in connection with service in Vietnam. In the reports on the legislation—H.R. 3045 in the 89th Congress—that led to this law, the Committees on Armed Services in both the House of Representatives and the Senate indicated that this date was selected becasue that was the approximate date on which American military advisers began to accompany "their Vietamese counterparts on military operations" (H. Rept. No. 89-239, p. 2; S. Rept. No. 89-800, p. 2).

The February 28, 1961, date also is used in section 112 of the Internal Revenue Code (relating to the treatment of income for tax purposes for members of the Armed Forces serving in Vietnam in certain circumstances) and section 239(a) of the Immigration and Nationality Act (INA) (section 1440 of title 8, United States Code, relating to expedited naturalization based on wartime service). In addition, February 28, 1961, is the date selected by the Department of the Army for the award of the Combat Infantryman's Badge and the Combat Medical Badge.

At the Committee's June 16 hearing, S. 2396 received general support, including that of the VA, and was opposed only by the PVA, which testified that it "does not object to extending . . . the beginning period of the Vietnam era . . . to February 28, 1961. Specifically, what we are opposed to is that the bill is limited in only recognizing veterans who served in the Republic of Vietnam."

Committee bill

Section 701 of the Committee bill would change the starting date for the Vietnam era for title 38 purposes to February 28, 1961, for veterans who served in Vietnam.

In considering the issue of the appropriate starting date for the Vietnam era, the Committee has recognized that there were a number of practical difficulties in setting a fixed date for a period of hostilities, such as were involved in Vietnam, where there was no one date when the United States' involvement changed in a dramatic fashion. The Committee believes that veterans who served during hostilities in Vietnam should be treated consistently regardless of the status of official governmental recognition of those hostilities.

The Committee also believes that it is appropriate for eligibility for veterans' benefits and services on the basis of service in Vietnam during wartime to be consistent with other laws and regulations relating to such service.

The Committee notes that two other provisions in title 38 which define periods of war—sections 101(6) (Spanish-American War) and section 101(7) (World War I)—provide precedents for the approach adopted in the Committee bill for the definition of the Vietnam era. In both of those provisions, the period is longer for those who served in particular locations.

The VA, in its testimony in support of this provision, as contained in section 201 of S. 876 in the 99th Congress, at the Committee's May 7, 1985, hearing, estimated that "approximately 48,000 veterans served in Vietnam between February 21, 1961, . . . and August 5, 1964". It is not known, however, how many of these individuals served earlier during the Korean conflict or later during the Vietnam era and are, therefore, already veterans of a period of war.

Veterans who served in Vietnam during the period from February 28, 1961, to August 5, 1964, but not any other period would become eligible for the following veterans' benefits under the Committee bill: non-service-connected pension benefits (if disability (or age), income, and net worth criteria also are met); readjustment counseling; certain burial benefits; loan guaranty benefits in certain cases; VA hospital care under section 610(a)(1)(G) of title 38; and certain employment benefits.

Extension of Authority for Regional Office in the Philippines

Section 702 of the Committee bill, which is derived from section 305 of S. 2267, an Administration proposal, would extend for 4 years, from September 30, 1988, to September 30, 1992, the Administrator's authority to maintain a Regional Office in the Philippines.

Background

At its Regional Office in Manila, Republic of the Philippines, the VA administers programs providing compensation, pension, and education benefits to veterans residing in the Philippines including Filipinos who were members of or attached to the United States Armed Forces during World War II. During FY 1987, over $122 million in benefits were paid by that office.

Committee bill

The Committee believes that the operation of a regional office in the Philippines is a cost-effective means of administering VA programs for beneficiaries residing in the Philippines. Therefore, the Committee bill would extend the VA's authority to operate the Regional Office there until September 30, 1992.

Use of Internal Revenue Service and Social Security Administration Data for Income Verification

Section 703 of the Committee bill, which is substantially identical to the provisions of S. 2611, an original bill reported by the Committee on July 6, 1988, would amend paragraph (7) of section 6103(1) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(1)(7)), relating to disclosures of information maintained by the Commissioner of Social Security or the Secretary of the Treasury for purposes of income verification to Federal, state, and local agencies administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program so as to require disclosure to the VA of (a) information for purposes of determining eligibility for VA needs-based pension programs under chapter 15 of title 38 or any other law administered by the VA, needs-based parents' dependency and indemnity compensation provided under section 415 of title 38, and VA health-care services based on income status under section 610(a)(1)(I) and 2(A), 610(b), and 612(a)(2)(B) of title 38, and (b) only wage and self-employment data from such Internal Revenue Service (IRS) and Social Security Administration (SSA) information for purposes of determining eligibility for compensation paid, pursuant to section 4.16 of title 38, Code of Federal Regulations, at the total-disability rate based on an individual determination of unemployability. In the case of compensation beneficiaries with total-disability ratings based on individual unemployability, section 703 would allow the VA to verify or otherwise act upon wage or self-employment data only if the Administrator finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.

Section 703 would also amend chapter 53 of title 38, relating to special provisions pertaining to VA benefit programs, to add a new section 3117 to prohibit the Administrator from using such IRS and SSA information without first complying with the requirements of section 1137 of the Social Security Act (42 U.S.C. 1320b-7) relating to independent verification of such data, notification to the individual concerned, and allowing the individual fair opportunity to contest agency findings based on such information.

In addition, the VA would be required, within 90 days after the date of enactment and before obtaining any such IRS and SSA information, to notify certain recipients of and applicants for VA benefits and services that income reported to the VA will be subject to verification against such information and to subsequently so notify new applicants and renotify all recipients. Finally, section 703 would provide that the VA's costs for establishing and operating the program under which the IRS and SSA information would be obtained, used, and verified would be paid from the VA's compensation and pension account and that amounts collected as a result of the program would be paid into that account.

Background

The VA administers several "needs-based" veterans benefits, including non-service-connected disability pension (paid to certain wartime veterans who have attained age 65 or who have permanent and total disabilities incurred subsequent to their military service); non-service-connected survivors' pension (paid to the spouses and children of certain war-time veterans who die subsequent to their service due to causes unrelated to their service); and parents' dependency and indemnity compensation (DIC) (paid to the parents of individuals who die of any cause while on active duty or, if subsequent to service, as a result of a disease or disability which arose while the veteran was on active duty). Eligibility for these benefits and the monthly rates payable depend upon the total income of the beneficiary and his or her immediate family.

In addition, certain veterans with disabilities incurred while they were on active duty receive service-connected disability compensation at the 100-percent rate (currently $1411 per month for a veteran with no dependents) even though their disabilities do not otherwise qualify for a 100-percent disability rating. Such compensation is paid when the VA determines that the service-connected disability or disabilities render the veteran unemployable. (The rating awarded in such a case is referred to as an "individual-unemployability" rating.)

In addition, the eligibility criteria for VA hospital, nursing home, or outpatient care include certain income criteria, and the eligibility criteria for domiciliary care include a VA determination of income and lack of adequate means of support.

In each case, eligibility determinations are made by the VA on the basis of income data which has been self-reported by the beneficiary. The only VA program matching Federally-collected data against VA self-reported beneficiary data to verify the latter uses information regarding Social Security payments. The VA's Inspector General has conducted one-time matches of beneficiary-reported data against other data bases. These one-time matches revealed material discrepancies between data reported by some beneficiaries and data compiled from other sources—for example, wage data of Federal and state employees or unemployment taxes paid by private employers based on wages earned.

In order to establish the extent and financial impact of such discrepancies, Senator Murkowski, on September 10, 1985, requested that the General Accounting Office (GAO) conduct a review of the accuracy of self-reported beneficiary income using certain income tax data bases maintained by the Internal Revenue Service and Social Security Administration. Because this review required access to tax-related data, the concurrence of the Joint Committee on Taxation to allow the GAO to act as the Joint Committee's agent was required and obtained. The GAO's review was based on the same data currently used to verify income data provided by applicants for and recipients of other needs-based programs such as Supplemental Security Income. For these benefits, access to certain data maintained by the IRS and SSA, generally third-party data—such as wage data provided by employers on W-2 forms and interest data provided by financial institutions on IRS Form 1099—as well as a limited amount of data reported by self-employed individuals is authorized by section 6103(1)(7) of the Internal Revenue Code (26 U.S.C. 6103(1)(7). Section 6103(1)(7) does not, however, authorize similar access to the VA for verifying the eligibility of recipients of needs-based veterans' benefits.

The GAO reviewed the records of 1.4 million 1984 VA pension recipients and found that nearly half—698,000—reported self-employment income or had income reported for them by third-party sources to the IRS and the SSA. Of these, 549,000 had a total of $947 million more income on IRS and SSA records than was recorded on VA records. GAO's findings indicated that, considering only discrepancies greater than $100, the potential 1984 overpayments totalled $182.5 million paid to nearly 149,000 VA beneficiaries. The GAO further found that only $25.3 million of these overpayments could have been identified by the VA using existing resources and procedures. Access to the same third-party and self-employment IRS and SSA data available to other agencies for purposes of eligibility determinations would have permitted identification of over $157.2 million in erroneous payments, according to the GAO. The GAO recommended that the Congress allow the VA access to such IRS and SSA information to permit verification of self-reported beneficiary income. The VA, in its comments on the GAO report, shared the GAO's concerns regarding income verifications, noting that the "VA needs the ability to verify wages, interest, and dividends."

Committee bill

Section 703 of the Committee bill would, effective on the date of enactment, amend paragraph (7) of section 6103(l) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l))—relating to disclosures, for purposes of income verification, of information from the Commissioner of Social Security or the Secretary of the Treasury to Federal, state, and local agencies administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program—to require generally the disclosure of such information to the VA for purposes of income verification in connection with its needs-based pension programs under chapter 15 of title 38 or other laws administered by the VA (primarily section 306 of Public Law 95–588); parents' DIC under section 415 of title 38; compensation based on individual unemployment ratings under section 4.16 of title 38, Code of Federal Regulations; and health-care services furnished on the basis of income, incapacitation, or resources under sections 610(a) (1)(I) and (2)(A) (hospital care), 610(b) (domiciliary care), and 612(a)(2)(B) (outpatient care) of title 38.

The bill would also amend chapter 53 of title 38, relating to special provisions in connection with VA benefit programs, to add a new section 3117, which would prohibit the Administrator from using such IRS and SSA information without first complying with the requirements of section 1137(c) of the Social Security Act (42 U.S.C. 132b–7(c)) for independent verification of such data, notification to the individual concerned, and allowing the individual fair opportunity to contest agency findings based on such information.

In determining whether a veteran qualifies for compensation based on individual unemployability, only the veteran's ability to earn a living is relevant, and unearned income, such as dividend payments, has no bearing on this determination. Accordingly, in the cases of disclosures for purposes of verifying entitlement to compensation based on an individual-unemployability rating, section 703 of the Committee bill would limit the VA's authorization to obtain IRS and SSA information to earned income, i.e., wage and self-employment information.

In addition, to avoid causing needless concern to compensation beneficiaries who, although unable to obtain or maintain a substantially gainful occupation, have some earnings, section 703 would allow the VA to verify independently or otherwise act upon wage or self-employment data for compensation beneficiaries with individual-unemployability ratings only if the Administrator finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability. The Committee expects the VA to evaluate data obtained as a result of the enactment of this legislation using the same standard now used to evaluate self-reported employment information. The Committee emphasizes that, by authorizing the VA to verify veterans' self-reported earnings in individual-unemployability cases, it is not suggesting that any changes should be made in the VA's eligibility criteria for these benefits or that such criteria are inappropriate or criticizing the merits of the program.

The Committee is greatly concerned that the costs of administering this cost-saving program not be taken from the VA's already-overburdened VA general operating expenses account, which provides funding primarily for the Department of Veterans' Benefits' operational expenses. Accordingly, section 703 of the Committee bill would generally provide in a new section 3117 of title 38 that the VA's cost of establishing and operating the program under which the IRS and SSA information would be obtained, used, and verified, would be paid from the VA's compensation and pension account, and that all the savings under the program would accrue to that account. By providing that collections achieved as a result of the matching of data would be credited to the compensation and pension account, on ongoing augmentation of the account from which the administrative expenses would be drawn would be provided.

Section 703 of the Committee bill would, in a free-standing provision, require that the VA notify benefit recipients and applicants that the income data they provide to the VA for the purpose of establishing initial or continuing eligibility for benefits would be subject to verification by means of matching against information in reports submitted by employers, financial institutions, and other third parties to the Internal Revenue Service and the Social Security Administration. The Committee bill would require that the VA provide this notice within 90 days of the date of enactment and prior to initiating verification and matching of data. Notification to beneficiaries would provide a deterrent to individuals who might otherwise be negligent about reporting their income or consider underreporting their income and thus should result in substantial savings (CBO estimates $36 million in FY 1989) even prior to the VA's implementation of verification procedures.

Subsequently, the VA would be required to provide notice of the income-verification program to all new applicants for the benefits involved or for health-care services based on income status and periodically to renotify all recipients.

The Committee emphasizes that this legislation would neither eliminate nor reduce the entitlement or eligibility of any VA beneficiary. It would merely provide the VA with a tool, previously provided to other Government agencies, to ensure that the furnishing of certain needs-based benefits and services is in accordance with statutory requirements. In addition to identifying potential overpayments, the Committee expects that the VA will used the data which this bill would make available to determine if increased payments are in order in those cases where the data indicate a beneficiary overreported his or her income.

The Committee wishes to emphasize the requirement in the Committee bill that the VA provide beneficiaries with notice of any proposed reductions in payments, the basis for the proposed reduction, and an opportunity for the beneficiary to respond to the VA's proposed action, as required by section 1137(c)(2) of the Social Security Act (42 U.S.C. 1320b-7(c)(2)). The Committee also emphasizes the requirement in section 6103(1)(7) of the Internal Revenue code of 1986 (26 U.S.C. 6103(1)(7)(C))—which would be applicable to the VA—that the agency receiving IRS and SSA information protect the confidentiality of that information.

The Committee expects the VA to consult with other agencies now using IRS and SSA third-party or self-employment data for eligibility verification in order to gain the benefit of their experience in establishing the procedures and mechanics of a successful data-matching program.

Procurement Through Local Contracts

Section 704 of the Committee bill would amend section 5025 of title 38 to (a) postpone for four years, until December 1, 1992, the requirements that VA medical centers annually submit December 1 reports to the Administrator, containing lists indicating the quantity of each health-care item procured at each medical center under a local contract and the total amount paid for such item and that the Administrator annually submit to the House and Senate Committees on Veterans' Affairs February 1 reports on the experience under section 5025 during the previous fiscal year; and (b) make a conforming change postponing until May 20, 1989, certain restrictions on procuring health-care items under local contracts. In lieu of the foregoing reports, the Administrator would be required to submit to the Committees a February 1, 1989, report showing the percentage of the total of all health-care items procured by the VA in fiscal year 1988 through local contracts and February 1, 1990, 1991, and 1992, reports showing the percentage of the total of all health-care items procured by the VA and by each VA medical center in the prior fiscal year which were purchased through local contracts. In the case of each medical enter at which the percentage was greater than 20 percent, the Administrator would be required to provide an explanation of the reason why that occurred.

The Committee bill would also change (until December 1, 1992) the definition of the term "health-care item" in current section 5025 so that the definition would not include any item listed in, or (as determined by the Administrator of Veterans' Affairs) of the same nature as an item listed in Federal Supply Classification (FSC) Group 73 which includes food delivery items such as eating utensils, ladles, spatulas, and trays).

Background

Section 5025(d)(1) of title 38 (enacted in section 403 of Public Law 100–322, the Veterans' Benefits and Services Act of 1988", on May 20, 1988) requires that each VA medical center submit to the Administrator on December 1 of each year (beginning in 1988) a report containing a list indicating the quantity and total cost of each health-care item procured under a local contract during the previous fiscal year.

Section 5025(d)(2) requires the Administrator on February 1 of each year (beginning in 1989) to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the VA's experience in the procurement of health-care items during the previous fiscal year.

Immediately prior to final passage of this legislation, the Committee was informed by the VA that the reporting requirements proposed to be made of medical centers would not be easily accomplished because the VA currently lacked the computer capability to capture the types of data which are required under this provision. The VA is in the process of developing its Integrated Supply Management System (ISMS) which would allow the VA to collect these data and a statement of work for a private contractor is being developed—under the VA's management studies contract program—to conduct a functional analysis of the current supply automation system in order that such an automated system can be designed. Further VA contracts, funded under the Supply Fund, then will provide for software development and computer hardware equipment requirements. At this point, the VA estimates that such a system can be designed, developed, procured, tested, and implemented by fiscal year 1993. The VA also advised that the cost of collecting the data manually would be prohibitive.

Committee bill

In order to provide appropriate relief with respect to the reporting requirements and at the same time require that currently available procurement data be supplied to the Committee, the bill would establish a transition period—beginning on December 1, 1988, and ending on November 30, 1992—for the implementation of certain reporting requirements established through the enactment of Public Law 100–322. Specifically, the Committee bill would postpone until December 1, 1992, the requirements for annual December 1 reports from VA medical centers to the Administrator containing lists indicating the quantity of each health-care item procured at each medical center under local contract and the total amount paid for these items.

Since the cost of manually collecting data would be prohibitive to the VA, the Administrator's February 1, 1989, report to the Congress would be required to show only the percentage of the total of all health-care items procured by the VA in Fiscal Year 1988 through local contracts.

The Administrator's February 1, 1990, 1991, and 1992, reports would be required to show the percentage of the total of all health-care items procured by the VA and by each VA medical center in the prior fiscal year which were purchased through local contracts and, in the case of each medical center at which the percentage was greater than 20 percent, an explanation of the reason why that occurred. The Committee notes that it was not the intent of the Congress to create a costly and burdensome manual reporting system and that, therefore, the Committee is providing a less detailed VA-requested reporting requirement during this period.

However, the Committee fully expects the VA to continue to place strong emphasis on minimizing the use of local contracts in the purchase of health-care items.

The Committee bill would also postpone until May 20, 1989—one year from the date of enactment of Public Law 100-322—certain restrictions on procuring health-care items under local contracts under current subsections (a) and (b)(2) of section 5025 of title 38. These changes are necessary in order to conform to the effective date of subsection (b)(1) of section 5025. Subsection (b)(1) provides, effective May 20, 1989, that a health-care item may be procured under a local contract except under certain circumstances. However, under current law, subsection (a) provides—inconsistently as of the date of enactment—that health-care items may not be procured by local contract except as provided in subsection (b) and (c). Subsection (b)(2) provides—again, as of the date of enactment—for certain limitations on emergency procurements under subsection (b)(1). It is clear that subsections (a) and (b) (1) and (2) should all take effect on the same date and the Committee bill would make the changes needed to achieve that result.

The Committee bill also excludes, until December 1, 1992, from the definition of "health-care item" under section 5025 any item listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73. The VA currently does not collect data on procurement of such food delivery items. Thus, reporting would have to be conducted by manual methods, making the accuracy of reporting questionable and the data collection workload costly.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill (as compared to costs under current law) during the first 5 years following enactment would be $375 million in budget authority and $326 million in outlays in FY 1989; $527 million in budget authority and $452 million in outlays in FY 1990; $427 million in budget authority and $397 million in outlays in FY 1991; $373 million in budget authority and $350 million in outlays in FY 1992; and $300 million in budget authority and $341 million in outlays in FY 1993. The cost estimate provided by CBO, setting forth a detailed breakdown of the costs, follows:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

August 1, 1988

Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for S.2011, the Veterans' Benefits and Programs Improvement Act of 1988, as ordered reported by the Senate Committee on Veterans Affairs, June 29, 1988. Final legislative language was not available when this cost estimate was prepared. The estimate is, therefore, subject to change.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L Blum

James L. Blum
Acting Director

Attached

cc: Honorable Frank H. Murkowski
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

August 1, 1988

1. BILL NUMBER: S.2011

2. BILL TITLE:

The Veterans' Benefits and Programs Improvement Act of 1988.

3. BILL STATUS:

As ordered reported by the Senate Committee on Veterans' Affairs, June 29, 1988.

4. BILL PURPOSE:

To increase the rates for disability compensation and dependency and indemnity compensation, to provide benefits for certain veterans exposed to Agent Orange during service in Vietnam, to authorize certain expansions in the Montgomery GI Bill, to improve the health-care benefits available to veterans suffering from service-connected, post-traumatic stress disorder, and for other purposes.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Direct Spending:					
Function 050					
Budget Authority	0	29	5	5	5
Estimated Outlays	0	29	5	5	5
Function 700					
Budget Authority	357	417	353	299	284
Estimated Outlays	316	398	357	303	289
Total Direct Spending					
Budget Authority	357	446	358	304	289
Estimated Outlays	316	427	362	308	294
Authorizations:					
Function 700					
Authorization Level	18	81	69	69	11
Estimated Outlays	10	25	35	42	47
Net Budgetary Impact					
Budget Authority/ Authorization Level	375	527	427	373	300
Estimated Outlays	326	452	397	350	341

The cost of this bill would fall in budget functions 700 and 050.

Basis of Estimate

Final legislative language was not available when this estimate was prepared. The estimate is, therefore, subject to change.

The following section-by-section cost analysis only addresses those sections of the bill that could be expected to have a significant impact on the federal budget.

Section 101. This section would increase the rates of disability compensation and dependency and indemnity compensation (DIC) on December 1, 1988, by the same percentage that Social Security benefits are increased on that date. In calculating the new monthly benefit rates, however, all amounts not in even dollars would be rounded to the next lower dollar.

(By fiscal years, in millions of dollars)

	1989	1990	1991	1992	1993
Budget Authority	392	466	460	454	448
Estimated Outlays	353	468	460	454	449

The CBO baseline, which was prepared using February 1988 economic assumptions, assumes that a 4.5 percent cost-of-living adjustment (COLA) will be made in Social Security benefit rates on December 1, 1988. The above estimate reflects the cost of a 4.5 percent COLA in compensation rates with the new rates calculated by rounding down all amounts less than $1. A more recent economic forecast indicates that the Social Security COLA is more likely to be 4.0 percent. Under this scenario, the compensation COLA authorized by section 101 would increase function 700 budget authority and outlays by $339 million and $305 million, respectively, in 1989.

These estimates were calculated by multiplying the average costs in each year for all disability compensation cases and for all DIC cases by the COLA percentage. The resulting average increase in costs per year were then multiplied by the estimated number of cases in each program each year to calculate the annual cost. Future average cost and caseload levels were projected according to historical trends for recipients by period of service.

The effects of rounding down in the benefit calculation were estimated by determining which payment categories would lose a dollar in the computation of the new monthly rate. The numbers of recipients in losing payment categories were then summed and multiplied by the number of benefit payments in the year.

Section 202. This section would provide temporary benefits to veterans with non-Hodgkin's lymphoma who were exposed to Agent Orange during service in Vietnam. The benefits provided would be equal to the compensation benefits for which the veteran or his survivors would be eligible if the lymphoma were considered service-connected. New claims for benefits could only be accepted between January 15, 1989, and the date six months after the Centers for Disease Control (CDC) submits its report on the Selected Cancers Study.

(By fiscal years, in millions of dollars)

	1989	1990	1991	1992	1993
Budget Authority	18	27	26	24	22
Estimated Outlays	16	27	26	24	22

Based on CDC expectations, this estimate assumes that the Selected Cancers Study report will be submitted on April 1, 1990. This would result in a sunset date for new awards under section 202 of September 30, 1990.

Approximately 2.4 million servicemembers served in the Republic of Vietnam during the Vietnam Era. Based on the survival to date of all Vietnam Era veterans, it is estimated that about 2.2 million of those veterans are still living.

According to the National Cancer Institute (NCI), the normal incidence of non-Hodgkin's lymphoma among males 35-55 is 11.16 per 100,000 per year. A recent Veterans Administration (VA) study, Proportionate Mortality Study of Army and Marine Corps Veterans of the Vietnam War (Patricia Breslin and others, Office of Environmental Epidemiology, VA, September 1987), found a statistically significant increase in mortality from non-Hodgkin's lymphoma among Marine Corps veterans who had served in Vietnam. While this may indicate a higher incidence of non-Hodgkin's lymphoma among veterans heavily exposed to Agent Orange, the study showed no statistically significant overall increase in lymphoma deaths when Army and Marine Corps veterans were viewed together. This cost estimate, therefore, is based on the normal incidence of non-Hodgkin's lymphoma in the general population of males aged 35-55.

It is estimated that this bill would provide benefits to approximately 1,200 veteran cases and 1,500 survivor cases. Veteran cases were assumed to receive benefits, on the average, equal to the disability compensation benefit for a 90 percent disability; survivor cases were assumed to receive benefits equal to the average benefit payable for all current DIC cases.

Section 204. This section would extend for 15 months, through fiscal year 1990, the authority of the VA to provide health care to veterans who were exposed to ionizing radiation or toxic substances in herbicides during their military service.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Estimated Authorization Level	0	12	3	0	0
Estimated Outlays	0	10	5	0	0

According to the VA, approximately $10.4 million was spent during fiscal year 1987 to provide inpatient and outpatient care to veterans for disabilities attributed to radiation or Agent Orange exposure. The estimated cost in 1990 was derived by inflating the 1987 cost. Outlays were estimated according to the historical spending pattern for the Medical Care account.

Section 205. This section would exclude from income for VA pension and medical care purposes, payments received in settlement of the Agent Orange product liability litigation (Michael F. Ryan, et al, v. DOW Chemical Company, et al). Such payments could only be excluded from the income calculation as long as the amount of the payment is less than the applicable income limit.

On July 5, the Federal District Court in Brooklyn dismissed the last legal obstacles to the payment of $170 million in cash benefits to veterans and their families in settlement of the lawsuit against seven Agent Orange manufacturers. Under current law, veterans establishing claims to these benefits who are also receiving VA pensions would have their pension payments reduced by the amount of the settlement funds. Section 205 would allow pensioners to exclude these payments from the calculation of income for the purpose of pension benefits and of the means test for VA medical care.

The CBO baseline, which was developed in February 1988, does not reflect the reduction in pension benefits that would result from the inclusion of settlement benefits in the computation of pensioners' incomes, because the litigation was still pending at that time. Therefore, there would be no effect on the baseline if these amounts were excluded from income. The CBO August baseline, however, will be reduced by the following amounts for the effects of the settlement funds. These amounts would also represent the cost to the August baseline of section 205.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Budget Authority	5	5	5	5	5
Estimated Outlays	5	5	5	5	5

Under the court-ordered settlement plan, benefits were to be paid over a 10-year period, from 1985 through 1994. It is not yet definite how the payments for 1985-1988 will be distributed. The above estimate assumes that the total payment calculated for each beneficiary will be distributed in 6 annual payments, rather than 10, based on information from the Court-appointed Special Master that this is the most likely alternative.

This estimate assumes that 5,000 pension beneficiaries would receive settlement payments averaging $1,000 each per year. While these estimates are very uncertain, they are based on the only data available, a computer match of the 240,000 preliminary claimants and Social Security benefit records. This match run found that 8,109 claimants were receiving disability insurance (DI) benefits and 314 claimants were receiving Supplemental Security Income (SSI) benefits. It is expected that there would be considerably more pension recipients among the claimants than SSI recipients, because virtually any veteran who is eligible for SSI would also be eligible for pension and would be receiving the latter benefit. Pension benefits are usually higher than SSI's, and SSI requires applicants to exhaust all other sources of income before receiving SSI. On the other hand there should be fewer pensioners among the claimants than DI recipients, because DI is not means tested.

The average total settlement payment has been estimated by the Special Master's office at about $5,700. If this were distributed in six equal annual payments, the average payment would be nearly $1,000.

Section 206. This section would authorize the VA to finance a review of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange. The review and report would be conducted by the National Academy of Sciences or other nonprofit scientific entity.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Estimated Authorization Level	1	0	0	0	0
Estimated Outlays	1	0	0	0	0

The estimated cost of this study was based on the cost of similar activities conducted in the past. It was assumed that the cost would be fully appropriated and would outlay according to historical spending patterns.

Section 303. This section would extend for one year the authority of the VA to provide vocational rehabilitation evaluations and training to new recipients of disability pension.

(By fiscal years, in millions of dollars)

	1989	1990	1991	1992	1993
Estimated Authorization Level	1	*	0	0	0
Estimated Outlays	1	*	0	0	0

* Less than $500,000.

The above estimate is based on participation rates experienced during the first three years of this pilot program. From the start of the program on February 1, 1985 through December 1, 1987, 6,655 new pension veterans were evaluated to determine their suitability for training. It is estimated that approximately 3,500 veterans newly awarded pension would be evaluated during the one-year extension proposed by section 303, at an average cost of approximately $310.

Should the cost of these evaluations be fully funded, additional costs would be incurred for training those veterans who are determined to be capable of achieving full-time employment. Of the 2,045 veterans deemed suitable for training during the pilot program, only 470 (23 percent) have participated in training programs so far. Based on this experience, it is estimated that less than 150 veterans would participate in some training or placement program and that nearly 80 percent of them would withdraw without obtaining a job. Because of the low participation rate and high dropout rate, it is estimated that the cost of training would be less than $500,000.

Those veterans who complete training and find jobs have their pensions reduced or eliminated because of their new earnings. Based on the experience of the pilot program, the ultimate reduction in pension benefits resulting from this extension is not expected to be significant.

Section 312. This section would allow a 120-day temporary enrollment period for anyone who had previously elected to not participate in the Montgomery GI Bill. Anyone who decides to participate would have to contribute a total of $1,200 and serve an additional two years in the service. Contributions would be made in monthly reductions in pay of $100 for twelve months.

	(by fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Readjustment Benefits					
Budget Authority	0	0	*	2	2
Outlays	0	0	*	2	2
Deductions from Military Pay					
Budget Authority	-17	-6	0	0	0
Outlays	-17	-6	0	0	0
Total					
Budget Authority	-17	-6	*	2	2
Outlays	-17	-6	*	2	2

* Less than $500,000.

This provision would affect anyone who was eligible to sign up for the Montgomery GI Bill and entered the service between 1985 and 1988. We assume that five percent of the individuals in the 1985 through 1988 accession cohorts who remain in the service and who could be expected to serve an additional two years of service would take advantage of this sign-up window. Officers were not assumed to take advantage of this option since they have had a consistently high participation rate. From the enlisted group about 19,000 additional service personnel are expected to sign up. This number is based on the projected number from the 1985 through 1988 cohorts who we expect to serve an additional two years of service. We assume that the monthly reductions in pay will begin as soon as the 120 day enrollment period is over.

Section 321. This section would allow individuals entitled to educational assistance under chapters 30, 32, and 35 of title 38, United States Code, and under chapter 106 of title 10, United States Code, to receive refresher courses. Refresher courses would provide additional assistance in knowledge or skill areas, or instruction in technological advances, for the purposes of participating in a particular program of education. Assistance for refresher courses would be limited to five months without any reduction in an individual's entitlement. Payments for Chapter 32 trainees would come out of the Readjustment Benefits account. This provision would become effective September 30, 1989.

(by fiscal years, in millions of dollars)

	1989	1990	1991	1992	1993
FUNCTION 050					
DOD Contributions for the Education Benefits Fund					
Budget Authority	0	29	5	5	5
Outlays	0	29	5	5	5
FUNCTION 700					
Readjustment Benefits					
Budget Authority	*	16	19	21	23
Outlays	*	16	19	21	23
Education Benefits Fund					
Budget Authority	0	29	5	5	5
Outlays	*	8	9	9	9
Offsetting Receipt for DOD Contribution					
Budget Authority	0	-29	-5	-5	-5
Outlays	0	-29	-5	-5	-5
Total					
Budget Authority	*	45	24	26	28
Outlays	*	24	28	30	32

* Less than $500,000.

Based on conversations with personnel at the VA, we assume that ten percent of veteran trainees would make use of refresher courses. From the chapter 35 trainee group, which consists primarily of the sons and daughters of deceased veterans, we assume that five percent would make use of refresher courses. We, also, assume that the veteran and non-veteran groups would average three months of benefits for refresher courses. Costs in function 050 include the use of refresher training by reservists. The Department of Defense's (DOD) estimated contribution to the Education Benefits Fund for 1990 takes into account the additional training expected by the service personnel receiving DOD supplementary benefits and the reserve personnel who enter the service between July 1, 1985, and the end of fiscal year 1990.

Section 331 This section would allow certain course withdrawals without requiring repayment of the course cost, as long as the total hours withdrawn does not exceed six semester hours or the equivalent. Under current law if a student withdraws from a course, the student must repay the VA any education benefits received for payment for that course. This provision would be effective March 31, 1989.

	(By fiscal years, in millions of dollars) 1989	1990	1991	1992	1993
Budget Authority	*	2	2	3	4
Outlays	*	2	2	3	4

This estimate is based on a study by the VA, "Cost-Effectiveness Study of School Liability Procedures Under 38 U.S.C., sec. 1785" and information on debt collection from the VA. Because the effective date of March 31, 1989, is late in the second semester, we do not expect a significant amount of overpayments to be affected in 1989. We estimate that, because of allowed withdrawals, there would be a reduction in overpayments equal to $9 million in 1990, $6.5 million in 1991, $7.5 million in 1992, and $8.5 million in 1993. Based on information on debt collection from the VA, we would have expect VA to collect 24.3 percent of the debt in the year it was established, 7.9 percent in the second year, 7.2 percent in the third, and 8.9 percent in the fourth. The loss in collections of debt that otherwise would have been collected is the cost of this provision.

Section 411. This section would extend for five years the authorization of appropriations for grants to states for the construction of veterans cemeteries.

	(By fiscal years, in millions of dollars) 1989	1990	1991	1992	1993
Estimated Authorization Level	0	3	3	4	4
Estimated Outlays	0	0	0	1	2

This account has not received an appropriation since 1986, because large unobligated balances had accrued. The estimated authorization level was, therefore, based on the average amount of program obligations incurred over the last five years, adjusted for inflation. Outlays were estimated according to historical spending patterns.

Section 603. This section would require the VA to conduct a study of the prevalence and incidence of post-traumatic stress disorder and other service-related psychological problems among Asian-American, American-Indian, Native-Hawaiian, Other Native-American Pacific-Islander, and Alaska-Native Vietnam veterans.

	(By fiscal years, in millions of dollars) 1989	1990	1991	1992	1993
Estimated Authorization Level	1	0	0	0	0
Estimated Outlays	1	0	0	0	0

The estimated cost of this study was based on the cost of similar activities conducted in the past. It was assumed that the cost would be fully appropriated and would outlay according to historical spending patterns.

Section 604. This section would require the VA to establish a network of five regional centers for mental-illness-related research, education, and clinical activities.

	(By fiscal years, in millions of dollars) 1989	1990	1991	1992	1993
Authorization Level	3	6	6	6	0
Estimated Outlays	1	6	7	6	1

The authorization levels stated in the bill were assumed to be fully appropriated. The outlays were estimated according to historical spending patterns adjusted to reflect the slower initial spending of a new program.

Section 606. This section would provide permanent authorization for the pilot program of community-based alcohol and drug treatment services.

	(By fiscal years, in millions of dollars) 1989	1990	1991	1992	1993
Estimated Authorization Level	6	6	6	6	7
Estimated Outlays	6	6	6	6	7

The VA estimates that they will spend $5.4 million on this program during fiscal year 1988. This amount was inflated to estimate the authorization levels for future years, which were assumed to be fully appropriated. Outlays were estimated according to historical spending patterns.

Section 611. This section would extend for one year, fiscal year 1990, the authority of the VA to provide respite care. Respite care involves the hospitalization of a chronically ill individual who is being cared for at home, in order to provide a period of rest to the caregiver.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Estimated Authorization Level	0	4	0	0	0
Estimated Outlays	0	3	1	0	0

Based on limited data from the VA, it was estimated that 1,700 episodes of respite care would be provided in 1990 under this extension, at an average cost of approximately $2,400 per stay. It was assumed that the cost would be fully appropriated and that outlays would follow historical spending patterns.

Section 612. This section would extend for one year, fiscal year 1990, the authorization of an appropriation of $500,000 to provide care for U.S. veterans in the Veterans Memorial Medical Center in the Republic of the Philippines.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Authorization Level	0	1	0	0	0
Estimated Outlays	0	0	*	*	*

* Less than $500,000.

The authorization level stated in the bill was assumed to be fully appropriated. Outlays were estimated according to historical spending patterns.

Section 614. This section would extend for three years the authorization of appropriations for grants to states for the construction of state veterans homes.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Estimated Authorization Level	0	44	45	47	0
Estimated Outlays	0	0	15	27	34

In fiscal year 1988, $40.3 million was appropriated to this account. This amount was increased for anticipated inflation to derive the estimated authorization levels for 1990-1992. These amounts were assumed to be fully appropriated and to outlay according to historical spending patterns.

Section 615. This section would establish a pilot program under which the VA would provide trained animals to physically assist certain categories of disabled veterans.

(By fiscal years, in millions of dollars)	1989	1990	1991	1992	1993
Estimated Authorization Level	1	*	*	*	0
Estimated Outlays	*	*	*	*	*

* Less than $500,000.

Under the pilot program, three types of animals would be provided:

- 20 trained monkeys would be provided to quadriplegic veterans who have service-connected disabilities rated 50 percent or greater.
- 10 trained service dogs would be provided to quadriplegic veterans who have service-connected disabilities rated 50 percent or greater.
- 20 trained signal dogs would be provided to veterans with service-connected hearing impairments.

The full cost of placing a helper monkey with a quadriplegic is approximately $21,000. The cost of a service dog is about $6,800 and a signal dog around $7,500. In addition, there would be administrative costs for monitoring the program and dealing with the inevitable problems of unsatisfactory placements.

Section 626. This section would authorize appropriations in fiscal years 1989-1992 to provide grants to health personnel training institutions for the purpose of expanding and improving the training of medical personnel. Appropriations of $5 million would be authorized for 1989 and 1990 and of $6 million for 1991 and 1992, and the funds would remain available for six years.

(By fiscal years, in millions of dollars)	1989	1990	1991	1992	1993
Estimated Authorization Level	5	5	6	6	0
Estimated Outlays	*	*	1	2	3

* Less than $500,000.

The Assistance for Health Manpower Training Institutions account, through which this program is funded, has not received an appropriation since 1979. The above estimate assumes that the authorization levels specified in the bill would be fully appropriated and that outlays would occur at a rate similar to that experienced by the program in the 1970s.

Section 703. This section would amend the Internal Revenue Code of 1986 to authorize access by the VA to income information reported to the Internal Revenue Service by employers, financial institutions, pension plans, and other third-parties. The VA would be permitted to use this data to verify the income reported by recipients of VA means-tested benefits, primarily VA pension. The bill would also amend title 38, U.S.C., to require the VA to independently verify conflicting data and to provide an opportunity for beneficiaries to contest the findings before benefits are reduced. Further, the VA would be required to notify all affected beneficiaries that reported income will be checked against IRS data. Finally, the section would require that the administrative cost of implementing these provisions be paid from funds appropriated to the Compensation and Pensions account.

	(By fiscal years, in millions of dollars)				
	1989	1990	1991	1992	1993
Benefit Savings					
Budget Authority	-36	-98	-175	-236	-246
Estimated Outlays	-36	-98	-175	-236	-246
Administrative Cost					
Budget Authority	0	10	21	31	31
Estimated Outlays	0	10	21	31	31
Net Budget Impact					
Budget Authority	-36	-88	-154	-205	-215
Estimated Outlays	-36	-88	-154	-205	-215

This estimate is based on data from a General Accounting Office Report, VETERANS' PENSIONS: Verifying Income with Tax Data Can Identify Significant Payment Problems (GAO/HRD-88-24, March, 1988). The GAO estimated that approximately $157 million was overpaid in pension benefits in 1984 that could have been identified through a match of income reports from pensioners and reports to the IRS from employers, financial institutions, and other organizations. While savings of this magnitude should be attainable eventually, it is expected that administrative difficulties would delay the achievement of this level of savings until 1991 at the earliest.

The estimate above assumes that the first computer match would be run on income reported for calendar year 1988. This data, as reported for pension purposes, should be available in early 1989. According to the Social Security Administration (SSA), IRS data for 1988 income should be available in October-

November of 1989. Thus, the VA should be able to begin investigating and adjudicating dissimilar income reports in early 1990.

Some savings would be expected to occur in 1989 and 1990, however, as a result of more accurate reporting of income by pensioners, once they learn that these reports will be checked against IRS data. The estimate above assumes that a portion of the anticipated reduction in pension payments would result from the voluntary discontinuance of fraudulent reporting on pension income questionnaires. Because these savings would occur independently of the computer match, it was assumed that they would begin with the notification to pensioners of the IRS match early in fiscal year 1989.

The GAO estimated that the administrative cost of identifying pension overpayments would be approximately $14 million. This assumed an average administrative cost of $20.32 per case, which would cover 1.12 hours of adjudicator time. CBO expects that the average administrative cost would be about 250 percent higher than estimated by GAO for several reasons. First, the VA would be required by the bill to independently verify any reporting inconsistencies and to provide pensioners with the opportunity to refute their findings. This would involve considerably more adjudicator time than is assumed in the GAO estimate. Also, the GAO estimate failed to include costs for the investigation of fraud or for the collection of prior overpayments, which would further increase administrative costs.

Despite the higher estimate of average administrative cost, CBO's estimate of total administrative costs is only slightly higher than GAO's. This results from the CBO assumption that a significant portion of the reduction in overpayments would ensue from voluntary corrections in income reports by pensioners, which would require no adjudication action.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

Section 411 and section 614 would extend the authorization of appropriations for two state grant programs, grants for the construction of state veterans cemeteries and grants for the construction of state veterans homes, respectively. In both cases the federal grant money must be matched by state funds, and, to that extent, would affect state budgets. However, participation in either program is totally voluntary for states; therefore, no obligation against state funds would be created by these provisions.

7. **ESTIMATE COMPARISON:** None.

8. **PREVIOUS CBO ESTIMATE:** None.

9. **ESTIMATE PREPARED BY:** K.W. Shepherd (226-2820).

10. **ESTIMATE APPROVED BY:**

James L. Blum
Assistant Director
for Budget Analysis

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of any individuals or businesses or result in any significant impact on the personal privacy of any individuals and that, except as noted below, the paperwork resulting from enactment would be minimal.

In the cases of provisions requiring reports to the Congress to provide program data and evaluations (sections 206, 207, 321, 505, 602, 603, 606, 612, 615, 625), notices to individuals (312 and 514), and the automated exchange of data between Government agencies (section 703), the amount of paperwork would be reasonable in light of the beneficial objectives of the legislation.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of the votes cast in person or by proxy by members of the Committee on Veterans' Affairs at a June 29, 1988, meeting. The Committee voted unanimously, 11-0, to report the Committee bill favorably to the Senate, as follows:

YEAS (11)	NAYS (0)
Alan Cranston	
Spark Matsunaga	
Dennis DeConcini	
George J. Mitchell	
John D. Rockefeller, IV	
Bob Graham	
Frank H. Murkowski	
Alan K. Simpson	
Strom Thurmond	
Robert T. Stafford	
Arlen Specter	

AGENCY REPORTS

On December 17, 1987, the Committee Chairman requested the Administrator of Veterans' Affairs for reports setting forth the agency's views on S. 1692, S. 1787, and S. 1805, and on January 26, February 29, March 23, May 12 and 27, and June 14, 1988, the agency's views on S. 2011, S. 2105, S. 2207, S. 2383, S. 2462, and S. 2511, respectively. Also, on December 17, 1987, the Chairman requested the views of the Department of Defense on S. 1805. The agency's views submitted in response to those requests follow.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 1 1 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration (VA) on S. 1692, 100th Congress, a bill "To amend title 38, United States Code, to provide for the payment of a veterans' disability benefit in the case of certain veterans who have non-Hodgkin's lymphoma."

This bill, designated the "Agent Orange Disability Benefits Act of 1987," would amend section 312 of title 38 of the United States Code (which establishes entitlement to VA disability compensation based upon presumptive incurrence during wartime service of certain diseases and disabilities) to provide that, in the case of any veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era, the disease of non-Hodgkin's lymphoma shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of the disease during the period of such service. The amendment would be effective as of October 1, 1987, and would not apply in the case of any claim received by the VA after September 30, 1991.

The presumption created by S. 1692 would not apply if: (1) there is affirmative evidence that non-Hodgkin's lymphoma was not incurred by the veteran during the performance of service in the Republic of Vietnam during the Vietnam era; (2) there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of the disease was suffered by the veteran between the date of the veteran's latest departure from Vietnam while on active service during the Vietnam era and the onset of the disease; or (3) the VA Administrator determines, based on the veteran's service records, and other Department of Defense records, that the veteran was not exposed to herbicides while in active service in Vietnam.

We oppose enactment of S. 1692. We are not aware of any scientific evidence which would support the extension of presumptive service connection for non-Hodgkin's lymphoma.

"America is #1—Thanks to our Veterans"

We strongly believe that presumptive service connection is not needed for any condition which can be shown by scientific evidence to have a cause-and-effect relationship with the circumstances of military service. Basic law and regulations regarding service connection would mandate direct service connection in such cases. We do not believe that it is sound public policy to make a sweeping presumption based on frustration with the inability of science to provide answers to controversial questions, or based on the lack of scientific evidence to support desired conclusions.

Further, the VA currently maintains the policy that all veterans who served in Vietnam are presumed to have been exposed to herbicides containing dioxin. 38 C.F.R. § 3.311a(b). S. 1692 seeks to limit the presumption for non-Hodgkin's lymphoma to those who were actually exposed. However, in so doing it employs a new mechanism of rebuttal which could never be applied. Military records cannot show who was and who was not exposed to herbicides in Vietnam. Hence, it would not be possible for the Administrator to determine that the presumption of service connection was rebutted based on a showing of no exposure to herbicides in Vietnam.

It is our view that a special presumption in Agent Orange cases is unnecessary. As mandated by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law No. 98-542, 98 Stat. 2725, 38 U.S.C. § 354 note), enacted on October 24, 1984, the VA has adopted regulations to ensure that Vietnam veterans exposed in service to Agent Orange receive VA disability compensation for disabilities connected by sound scientific and medical evidence to such service. The Veterans' Advisory Committee on Environmental Hazards, an advisory committee created under the Act which includes recognized authorities in the fields of epidemiology and the health effects of dioxin, continually reviews the scientific and medical literature to ensure that the criteria set forth in the regulations reflect the current state of scientific knowledge. Thus, presumptive service connection is not needed for any condition which can be shown by scientific evidence to have a cause-and-effect relationship to the circumstances of military service, as such conditions are compensable under the current law and regulations.

There is currently insufficient sound scientific data to support an association between exposure to herbicides such as Agent Orange and non-Hogkin's lymphoma, based upon the review of the literature conducted by the Veterans' Advisory Committee on Environmental Hazards. The majority of studies have found negative results, and isolated studies must be interpreted with caution, based upon inherent limitations. For example, although the Vietnam veterans proportionate mortality study found a statistically-significant excess of non-Hodgkins lymphoma among Marines who served in Vietnam, it did not find a similar increase among Army veterans who served there during the same period. Accordingly, the Advisory Committee determined that the proportionate mortality study's findings were inconclusive.

Studies based upon population groups other than Vietnam veterans also provide equivocal results. These studies must also be interpreted with caution, given the radically different circumstances of the exposures of Vietnam veterans and those exposed occupationally over long periods of time. In fact, the recently completed dioxin serum assay conducted by the Centers for Disease Control strongly suggests that Vietnam veterans did not have significant exposures to Agent Orange based upon the lack of significant differences in dioxin content between those thought to have been highly exposed to the herbicide and those who were not, and between those veterans who served in Vietnam and those who did not. Accordingly, the studies currently in existence are insufficient to establish a cause-and-effect relationship, and upon a review of the literature, the Advisory Committee has found no scientific basis for changing the regulations to include non-Hodgkins lymphoma as a compensable disease.

In view of the foregoing, the VA opposes enactment of S. 1692.

We estimate that enactment of S. 1692 would result in one-time administrative costs of $266,000 in fiscal year 1989, and respective yearly benefit costs as follows:

Fiscal Year	Cost ($ Thousands)
1989	$31,543
1990	32,677
1991	33,812
1992	34,936
1993	31,040

The five-year total cost would therefore be $164,008,000. Enclosed is a report on the methodology upon which these computations are based.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1692 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

METHODOLOGY
(S 1692, 100th Congress)

a) Identification of Bill - S 1692, 100th Congress

b) Highlights - This bill proposes to amend title 38, USC, to provide disability benefit payments to certain veterans who have non-Hodgkins lymphoma.

c) Estimated five-year cost - SEE MEMO

d) Employment Requirements - SEE MEMO

e) Change in caseload - SEE MEMO

f) Benefit Methodology - The cost estimate is based on the estimated number of veterans who served within the borders of South Vietnam, between January 1, 1965 and March 28, 1973 (2,594,000). Because there is no authoritative source of the annual number of separations of service-persons who served in South Vietnam, the veteran population potentially eligible under this proposal has been estimated. We extrapolated this population from:

1) The estimated number of gross separations by year of those veterans who had service in the Vietnam theater from 1965 thru 1981.

2) The number of personnel who served in the Southeast Asia Theater during this time period (3,403,100).

3) The estimated number of personnel who served within the borders of South Vietnam (2,594,000). and,

4) The actual and projected number of Vietnam Era veterans, between 1981 and 1993.

The ratio of total Vietnam theater separations between 1965 and 1981 to the 1981 Vietnam era veteran population was applied to the actual and estimated Vietnam era population between 1982 and 1993. The results were assumed to be indicative of the estimated number of Vietnam theater separations from 1982 to 1993. To these 29 individual years of data (1965 to 1993) the percent of those veterans with service in Vietnam to those veterans with service in the theater (76.2%) was applied to derive an estimated yearly number of veterans who had performed active service in Vietnam. To this population, incident and mortality rates for non-Hodgkins lymphoma were applied to determine the number of cases that would be eligible for veteran's compensation (incidence less mortality). The survivor cases, were predicated on the historical dependency rates of disabled veterans.

g) Administrative Methodology - The administrative cost is based on the estimates of veterans and survivors receiving non-Hodgkins lymphoma benefits. Veteran cases were costed using end products #110 (Initial Disability Compensation Claims) and survivors cases were costed using end product #140 (Initial Death Compensation Claims). In addition, a factor for both Administrative and Finance Service was included to reflect the associated increase in their workload as a result of an increased C&P workload.

h) Other Assumptions - The following assumptions were used in costing this proposal:

1) An annual incident rate of 10.5 per 100,000 was assumed for non-Hodgkins lymphoma consistent with the Surveillance Epidemiology End Results (SEER), Incidence and Mortality Data 1977": National Cancer Institute, Table III-A.

2) An annual mortality rate of 6 per 100,000 per year was used for non-Hodgkins lymphoma consistent with the Surveillance Epidemiology End Results (SEER), Incidence and Mortality Data 1977": National Cancer Institute, Table III-A.

3) It was assumed that the 100% rate would be paid to those cases diagnosed with non-Hodgkins lymphoma, between 1989 and 1992, for approximately a year and a half as a result of their initial diagnoses and treatment. The payment would then revert to the average payment of cases currently on the rolls.

4) The average annual award value for a Vietnam Era survivor case was used for survivor cases.

5) It was assumed that all claims by veterans after September 30, 1992 would be disallowed. Survivor cases would be allowed after that date, if veteran's eligibility was established between
October 1, 1988 and prior to October 1, 1992.

6) The cost estimate assumes that all cases potentially eligible for benefits as a result of this proposal would apply and be granted benefits.

i) Previous estimates - H.R. 1961, 98th Congress an Agent Orange bill with a presumption of service connection for soft tissue sarcoma.

j) Office and Individuals responsible - DVB Budget Staff (200); Steven McLaughlin, A.K. Raja.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 11 1988

Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration (VA) on S. 1787, the "Veterans' Agent Orange Disabilities Act of 1987." For the reasons set forth below, the VA opposes enactment of this bill.

S. 1787, inter alia, would amend section 312 of title 38, United States Code, to provide for presumptions of service connection for certain diseases suffered by veterans who served in the Republic of Vietnam during the Vietnam era. These presumptions are supported, in the bill, by a finding of the Congress that there is sufficient scientific evidence to warrant a presumption that dioxin or other toxic herbicides used in Vietnam cause non-Hodgkin's lymphoma and lung cancer as well as disease-causing immunosuppressive effects.

First, the bill would create an irrebuttable presumption that non-Hodgkin's lymphoma, lung cancer (if manifested within 25 years after service in Vietnam), and certain immunosuppressive diseases (to be determined under the bill and published in VA regulations) were caused by such service. This presumption is not to be affected by the provision in section 313 of title 38, United States Code to the effect that a presumption of service connection can be rebutted by affirmative evidence to the contrary, including evidence of an intercurrent disease or injury and evidence that the disability was due to the veteran's own misconduct.

Second, the bill would require the Administrator of Veterans' Affairs to contract with a nonprofit private scientific organization, preferably the National Academy of Sciences, for the performance of a survey of all completed and ongoing scientific studies of the health effects of dioxin and other toxic herbicides used in Vietnam and a determination, for each such herbicide, "what (if any) diseases are reasonably associated with damage to or suppression of the human immune system resulting from exposure to such herbicide." A list of these diseases would be provided to the Administrator and annually updated, and they would constitute the immunosuppressive diseases discussed above.

Third, the Administrator would be directed to prepare a report on clinical data obtained in connection with physical examinations and treatment provided by the VA to persons exposed to dioxin or other toxic substances, under a new section 625 of title 38, United States Code. The report, to be submitted semiannually to the congressional Committees on Veterans' Affairs, would contain a summary of the information obtained, an analysis of that information, and an explanation for the incidence of any disabilities found.

At the outset, we would note that there are no provisions concerning length or time of service for veterans who would have presumptive-service-connected disabilities under the bill. Under VA regulations appearing in section 3.311a(b) of title 38 of the Code of Federal Regulations, all veterans who served in the Republic of Vietnam during the Vietnam era are presumed to have been exposed to a herbicide containing dioxin. Moreover, the presumption of service connection under this bill could not be rebutted even by unequivocal evidence that the disability was caused by an intervening cause, subsequent to the time of discharge, or by the veteran's own willful misconduct. Thus, for example, a veteran with a 30-year history of smoking cigarettes, who served for one week in Vietnam, would be able to recover service-connected disability benefits for lung cancer. In this regard, the provisions in this bill are contrary to basic principles of service connection applicable in other contexts.

It is our view that a special presumption in Agent Orange cases is unnecessary. As mandated by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law No. 98-542, 98 Stat. 2725, 38 U.S.C. § 354 note), enacted on October 24, 1984, the VA has adopted regulations to ensure that Vietnam veterans exposed in service to Agent Orange receive VA disability compensation for disabilities connected by sound scientific and medical evidence to such service. The Veterans' Advisory Committee on Environmental Hazards, an advisory committee created under the Act which includes recognized authorities in the fields of epidemiology and the health effects of dioxin, continually reviews the scientific and medical literature to ensure that the criteria set forth in the regulations reflect the current state of scientific knowledge.

Thus, presumptive service connection is not needed for any condition which can be shown by scientific evidence to have a cause-and-effect relationship to the circumstances of military service, as such conditions are compensable under the current law and regulations.

There is currently insufficient sound scientific data to support an association between exposure to herbicides such as Agent Orange and either non-Hodgkin's lymphoma or lung cancer, based upon the review of the literature conducted by the Veterans' Advisory Committee on Environmental Hazards. The majority of studies have found negative results, and isolated studies must be interpreted with caution, based upon inherent limitations. For example, although the Vietnam veterans proportionate mortality study found a statistically-significant excess of non-Hodgkin's lymphoma and lung cancer among Marines who served in Vietnam, it did not find a similar increase among Army veterans who served there during the same period. Moreover, the study did not include any data concerning the smoking history of the participants, even though cigarette smoking is a widely-recognized cause of lung cancer. Accordingly, the Advisory Committee determined that the proportionate mortality study's findings were inconclusive.

Studies based upon population groups other than Vietnam veterans also provide equivocal results. These studies must also be interpreted with caution, given the radically different circumstances of the exposures of Vietnam veterans and those exposed occupationally over long periods of time. In fact, the recently-completed dioxin serum assay conducted by the Centers for Disease Control strongly suggests that Vietnam veterans did not have significant exposures to Agent Orange based upon the lack of significant differences in dioxin content between those thought to have been highly exposed to the herbicide and those who were not, and between those veterans who served in Vietnam and those who did not. Accordingly, the studies currently in existence are insufficient to establish a cause-and-effect relationship, and upon a review of the literature, the Advisory Committee has found no scientific basis for changing the regulations to include non-Hodgkin's lymphoma and lung cancer as compensable diseases.

To the extent that scientific evidence does not establish a nexus between exposure to a toxic substance in service and a given medical condition, there is no basis for making a presumption of service connection. In our view, it is not sound public policy to make sweeping presumptions based on frustration with the inability of science to provide answers to questions concerning causation or based on the lack of scientific evidence to support desired conclusions.

With regard to immune-deficiency disease, there is similarly little evidence to suggest a cause-and-effect relationship between exposure to Agent Orange or other herbicides and subsequent harm to the immune system. In this regard, we would note that the literature survey mandated by the bill would be somewhat duplicative of that already being conducted by the VA under contact pursuant to Public Law 96-151 (93 Stat. 1097, 38 U.S.C. § 219 note), which has resulted in the issuance of ten volumes of literature search and analysis, with volumes eleven and twelve in production. We understand that this effort has been highly regarded by the scientific community and is being used as a resource. Moreover, the Veterans' Advisory Committee on Environmental Hazards is also monitoring the scientific and medical literature on this issue. Additional efforts to review the literature would be, in our view, unnecessary and unlikely to produce any new data.

Finally, concerning the requirement that the VA monitor and report on the clinical data obtained from physical examinations and treatment furnished to veterans exposed to dioxin or certain other toxic substances, we would question the value of such a report. The data sought to be analyzed is that generated from those veterans seeking health care from the VA under the authority of Public Law 97-72 (95 Stat. 1047, 38 U.S.C. § 610(e)), which became effective on November 3, 1981. Thus, any data generated would be descriptive only of those self-selected individuals who for a variety of reasons sought either health care or physical examination from the VA. The VA is currently monitoring this data, as well as that generated by the Agent Orange Registry program. However, we have repeatedly cautioned against reliance upon this data, primarily because it is not representative of the entire Vietnam veteran population.

In view of the above, it is our conclusion that S. 1787 is both unnecessary and unwarranted. We oppose its enactment.

The five-year cost of this proposal is estimated as follows:

FY	Veterans	Survivors	Benefit Costs ($000)	Staff Years	Administrative Cost ($000)
1989	9,000	22,400	$ 254,477	60	$2,734
1990	9,400	23,600	265,401	...	...
1991	9,800	24,800	276,326	...	...
1992	10,100	25,900	285,323	...	...
1993	10,400	26,900	292,557	...	...
			$1,374,084		$2,734

The above benefit cost estimate includes the presumptive diseases of non-Hodgkin's lymphoma and lung cancer but does not include cost for any disease associated with damage to or suppression of the human immune system. Until these immunosuppressive diseases can be determined by an appropriate nonprofit scientific organization, as provided for in the bill, the estimated cost of that provision cannot be realistically determined.

The administrative costs in fiscal years 1990 through 1993 would be insignificant, i.e. less than $100,000 in any fiscal year. Enclosed for your further information is a detailed explanation of the methodology used and assumptions made in estimating these costs.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1787 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

METHODOLOGY
(S 1787, 100th Congress)

a) Identification of Bill - S 1787, 100th Congress

b) Highlights - This bill proposes to amend title 38, USC, to prescribe certain presumptions in the case of veterans who performed active service in Vietnam during the Vietnam era.

c) Estimated five-year cost - SEE MEMO

d) Employment Requirements - SEE MEMO

e) Change in caseload - SEE MEMO

f) Benefit Methodology - The cost estimate is based on the estimated number of veterans who served within the borders of South Vietnam, between January 1, 1965 and March 28, 1973 (2,594,000). Because there is no authoritative source of the annual number of separations of servicepersons who served in South Vietnam, the veteran population potentially eligible under this proposal has been estimated. We extrapolated this population from:

1) The estimated number of gross separations by year of those veterans who had service in the Vietnam theater from 1965 thru 1981.

2) The number of personnel who served in the Southeast Asia Theater during this time period (3,403,100).

3) The estimated number of personnel who served within the borders of South Vietnam (2,594,000). and,

4) The actual and projected number of Vietnam Era veterans, between 1981 and 1993.

The ratio of total Vietnam theater separations between 1965 and 1981 to the 1981 Vietnam era veteran population was applied to the actual and estimated Vietnam era population between 1982 and 1993. The results were assumed to be indicative of the estimated number of Vietnam theater separations from 1982 to 1993. To these 29 individual years of data (1965 to 1993) the percent of those veterans with service in Vietnam to those veterans with service in the theater (76.2%) was applied to derive an estimated yearly number of veterans who had performed active service in Vietnam. To this population, incident and mortality rates for non-Hodgkin's lymphoma and lung cancer were applied to determine the number of cases that would be eligible for veteran's compensation (incidence less mortality). The survivor cases, were predicated on the historical dependency rates of Vietnam era disabled veterans.

g) Administrative Methodology - The administrative cost is based on the estimates of veterans and survivors receiving non-Hodgkins lymphoma and lung cancer benefits. Veterans cases were costed using end product #110 (Initial Disability Compensation Claims) and survivor cases were costed using end product #140 (Initial Death Compensation Claims). In addition, a factor for both Administrative and Finance Service was included to reflect the associated increase in their workload as a result of an increased C&P workload.

h) Other Assumptions - The following assumptions were used in costing this proposal:

1) An annual incident rate of 10.5 per 100,000 was assumed for non-Hodgkin's lymphoma and 81.7 per 100,000 for lung cancer consistent with the Surveillance Epidemiology End Results (SEER), Incidence and Mortality Data 1977": National Cancer Institute, Table III-A.

2) An annual mortality rate of 6 per 100,000 per year for non-Hodgkin's lymphoma and 65.6 per 100,000 for lung cancer was used consistent with the Surveillance Epidemiology End Results (SEER), Incidence and Mortality Data 1977": National Cancer Institute, Table III-A.

3) It was assumed that the 100% rate would be paid to those cases diagnosed with non-Hodgkin's lymphoma, for approximately a year and a half as a result of their initial diagnoses and treatment. For lung cancer cases, it was assumed that the 100% rate would be paid for two and a half years as a result of their diagnoses and treatment. The payments would then revert to the average payment of cases currently on the rolls.

4) The average annual award value for a Vietnam Era survivor case was used for survivor cases.

5). The cost estimate assumes that all cases potentially eligible for benefits as a result of this proposal would apply and be granted benefits. It does not include cost for any retroactive entitlement for those cases that had previously applied for benefits and were disallowed, because the disease, at the time the original claim was filed, had been determined to be non-service connected. In addition, to being unable to determine the number of claims, the length of time of that retroactive entitlement and the value of those payments cannot be determined.

6). The administrative cost of this proposal does not include any contractual costs of surveys and studies to be undertaken by the National Academy of Sciences.

i) Previous estimates - H.R. 1961, 98th Congress an Agent Orange bill with a presumption of service connection for soft tissue sarcoma.

j) Office and Individuals responsible - DVB Budget Staff (20D); Steven Mclaughlin, A.K. RAJA.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 25 1988

Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration (VA) on S. 1805, 100th Congress, a bill "[t]o protect certain pensions and other benefits of veterans and survivors of veterans who are entitled to damages in the case of In re: 'Agent Orange' Product Liability Litigation." This measure generally provides that settlement payments resulting from the Agent Orange product-liability litigation will not be considered in determining VA-pension eligibility or rates, or eligibility for hospital and nursing home care.

For the reasons set forth below, the Veterans Administration opposes enactment of S. 1805.

S. 1805 provides that any payments received as a result of the settlement approved on January 7, 1985, by the United States District Court for the Eastern District of New York in the case In re: "Agent Orange" Product Liability Litigation (Case Number MDL No. 381) may not be considered for the purpose of three determinations made by the Administrator of Veterans' Affairs in individual cases: (1) eligibility for a need-based pension under chapter 15 of title 38 of the United States Code; (2) the amount of such pension; and (3) the amount of attributable income under section 622 of title 38, for the purpose of determining (under section 610(a)(1)) ability to defray expenses of medical care and consequent eligibility for hospital or nursing home care for a non-service-connected disability. The cited litigation, as you know, resulted in a number of major corporations, which had manufactured Agent Orange, agreeing to pay $180 million into a settlement fund to be distributed among various members of the plaintiff class.

Although S. 1805 affects provisions of title 38 of the United States Code, it does not amend title 38 and would constitute a freestanding provision of law if enacted. As a technical matter, we oppose in principle any legislation which affects title 38 without making the necessary amendments to its text. Legislation thus enacted would defeat the purpose of codification and lead to confusion, misinterpretation, and possible unwitting conflict between provisions.

On a substantive level, we are unaware of any reason to treat the proceeds from the Agent Orange settlement any differently from the proceeds of any other settlement, or any other income, for the purpose of determining entitlement to need-based veterans' benefits. S. 1805, if enacted, would be discriminatory in favor of claimants receiving income from the Agent Orange settlement and would give rise to demands that other categories of income not be considered in determining entitlement to benefits. In fact, there is no difference in the need status of persons receiving this type of income from that of other claimants who might receive a court settlement in a different type of tort suit, whose countable income for pension and other purposes would include the settlement received.

Moreover, any assertion that the settlement proceeds constitute payment for injuries incurred in the military service and are therefore deserving of special consideration would be meritless. There has been no admission of liability on the part of the chemical companies and no determination of cause and effect has been made between any alleged exposure to Agent Orange and the subsequent development of adverse health effects. Further, the best scientific evidence currently available makes it extremely unlikely that such a cause-and-effect relationship will ever be found for the disabilities sustained by the class members, with the possible exception of chloracne, as the trial court and court of appeals recognized. See In re "Agent Orange" Product Liability Litigation, 597 F. Supp. 740, 749, 775 (E.D.N.Y. 1984), aff'd, 818 F.2d 145, 149, 171-72 (2d Cir. 1987), cert. denied, 108 S. Ct. 695 (1988). Finally, the VA has in effect regulations for the granting of service-connected benefits for disabilities related by sound scientific and medical evidence to exposure to Agent Orange, as mandated by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law No. 98-542, 98 Stat. 2725, 38 U.S.C. § 354 note), enacted on October 24, 1984. In the event that there is a sound scientific and medical basis for establishing a nexus between exposure in service and a particular disability, a veteran is able to secure compensation from the VA for such disability under section 3.311a of title 38 of the Code of Federal Regulations.

The provisions in S. 1805 relating to VA pensions, in particular, are contrary to the basic purpose of the VA pension program, which is to provide benefits based upon need. After the pension program was extensively examined by the Congress in 1978, Public Law 95-588 was enacted, in order to eliminate inequities, anomalies, and inconsistencies which had developed under prior pension laws. Exclusion-of-income provisions such as those contemplated by the instant bill would result in different eligibility determinations or rates being applied to claimants who really have identical incomes, but from different sources--one of the anomalies which Public Law 95-588 sought to correct. A review of the categories of excludable income retained in section 503 of title 38, United States Code, reveals that exclusion of Agent Orange settlement proceeds would be completely out of character with the few, limited income exclusions which were retained when the section was amended.

We would also note that the provision relating to hospital-care entitlement is somewhat duplicative of existing provisions of law. Such care is currently provided to veterans for service-connected disabilities. It is also being provided, through September 30, 1989, to Vietnam veterans exposed in service to dioxin (or to a toxic substance found in a herbicide or defoliant) under subsections (a)(1)(G) and (e)(1)(A) of section 610 of title 38, unless the disability is found to have resulted from a cause other than the exposure.

We are unable to provide a cost estimate for this proposal due to the lack of specific data on the number of veterans or their survivors who would lose pension eligibility, or have their pension payment reduced, because they received a settlement from the cited litigation.

In view of the foregoing, we oppose enactment of S. 1805.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1805 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D.C. 20301-1600

27 [illegible] 1988

Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on S. 1805, 100th Congress, a bill "To protect certain pensions and other benefits of veterans and survivors of veterans who are entitled to damages in the case of In re: "Agent Orange" Product Liability Litigation."

S. 1805 would exempt from income payments resulting from the settlement approved by the U.S. District Court, Eastern District of New York in the case of "Agent Orange" Product Liability Litigation. Such exemption would affect the eligibility of individuals to receive a Veterans' Administration (VA) pension under chapter 15 of title 38, United States Code, and the amount of such person's attributable income under 38 United States Code 622.

Determinations of eligibility to pensions and the amount of such pensions, based on income levels, are made by the Veterans' Administration. The proposed legislation would concern the administration of VA pension matters and would not affect programs of the Department of Defense. As such, the Department of Defense defers to the Veterans' Administration as to the merits of S. 1805.

The proposed legislation will have no cost or budget impact on the Department of Defense.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

Kathleen A Buck
Kathleen A. Buck

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 10 1988

Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to your request for a report on S. 2011, 100th Congress, entitled "Veterans' Compensation Cost-of-Living Adjustment Act of 1988."

As you know, we strongly support maintaining the purchasing power of disability and death benefits for veterans and their dependents and survivors. However, for reasons that follow, the Veterans Administration (VA) opposes enactment of S. 2011.

The measure, if enacted, would provide for increases in rates of disability compensation for veterans, including the special clothing allowance for certain veterans severely disabled due to service-connected disability, and dependency and indemnity compensation (DIC) for veterans' surviving spouses and children.

Section 2 of the bill would, on a one-time basis effective December 1, 1988, index rates of disability compensation for veterans and DIC for surviving spouses and children to the automatic cost-of-living adjustment (COLA) to take effect for social security benefits on December 1, 1988. This would provide an approximate increase in these rates of 4.2 percent. Title I of our draft bill, which you introduced at our request on April 7, 1987 as S. 940 would, if enacted, accomplish the same purpose, though by different means. Instead of indexing these benefit rates to this year's social security COLA, as proposed by S. 2011, S. 940 would index them directly to the increase in the Consumer Price Index (CPI). Further, S. 940 would provide for the automatic future annual indexing of these rates to annual CPI increases, a provision not included in S. 2011.

Disability compensation benefits are payable under chapter 11 of title 38 to furnish veterans disabled during, or as a consequence of, military service, with financial relief for their reduction in earning capacity. The size of benefits varies with the degrees of disability demonstrated, and additional compensation is payable for dependents if the veteran's disability is rated 30 percent or more disabling.

DIC benefits are payable under chapter 13 of title 38 to the surviving spouses and children of veterans whose deaths were service-connected. Payments at DIC rates may also be made if a veteran's death was not service-connected but the veteran was rated totally disabled for a specified period prior to death. Surviving spouses' DIC rates are based on the veterans' military pay grades. A surviving spouse may receive additional payments for the veteran's children under the age of 18, or when the surviving spouse is disabled. Children over the age of 18 who became helpless before reaching that age may receive DIC, as may those ages 18 to 23 attending approved educational institutions. If there is no surviving spouse, a child under the age of 18 may also receive DIC.

The administration of the disability compensation and DIC programs is one of the VA's most significant responsibilities. We recognize the obligation to propose periodic adjustments in monthly rates as economic circumstances change. In recent years, compensation adjustments have generally been keyed to indexed COLA's in Social Security and VA pension, although these adjustments have not been automatic. Rather, they have been effected by enactment of separate public laws designed for that purpose, the most recent being Public Law 100-227, approved by the President on December 31, 1987. Since 1973, legislation has been enacted in every year (except 1983) granting increases in these benefits to compensate for cost-of-living increases. This Administration has consistently supported these adjustments.

While the Administration strongly supports COLA's based upon actual cost-of-living increases, we believe the policy evident in S. 2011 would best be effectuated by legislation providing for an automatic annual increase in compensation rates indexed to increases in the CPI. Tying compensation and DIC rates to the CPI would assure veterans and their survivors that they would receive full increases, in pace with inflation, in a timely manner, avoiding delays such as that experienced with Public Law 100-227. It would also save Congress the difficulty of regularly considering new veterans' COLA legislation, as it has been required to do virtually every year for over a decade and twice in the same year in one instance.

We estimate that enactment of S. 2011 would result in the following costs over the next 5 years:

FY	Cost ($ millions)
1989	$378.5
1990	452.4
1991	450.6
1992	448.5
1993	446.4
	$2,176.4

In view of the preceding, we cannot support S. 2011 in its current form. We recommend, instead, that the Committee act promptly and favorably on S. 940.

We are advised by the Office of Management and Budget that there is no objection to the submission of this report to the Congress, and that enactment of S. 940 would be in accord with the program of the President.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 17 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to respond to your request for the views of the Veterans' Administration on S. 2105, a bill "To amend title 38, United States Code, to extend for four fiscal years the authority of the Veterans' Administration to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other certain community-based facilities." While we agree with the principal purposes of S. 2105, we recommend that the Committee modify the bill in accordance with legislation we have proposed.

The VA contract program for veterans with alcohol and drug dependence disorders was initiated as a pilot project in 1980 pursuant to Pub. L. 96-22. Subsequent legislation, Pub. L. 99-166 § 101, extended the program through September 30, 1988. Under this program, the Veterans' Administration is authorized to contract for care, treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based facilities for eligible veterans suffering from alcohol and drug dependence or abuse disabilities. Through the use of halfway house contracts, veterans suffering from drug and alcohol abuse disorders, who begin treatment in a hospital detoxification ward, are able to continue rehabilitation in a supportive community-based environment. This helps to facilitate the difficult transition back into the community at large.

Approximately 94 VA medical centers now participate in the drug and alcohol halfway house program and they administer approximately 400 contracts with non-VA community-based halfway house facilities. In a comprehensive evaluative study required by Pub. L. 99-166, we found that the mean per diem rate paid by the VA for halfway house care under this program is $26, contrasted with the average estimated cost of inpatient hospital care of $93/103 per day. In addition to its cost efficiency, the contract rehabilitation program has demonstrated its effectiveness. Follow-up revealed participants remained drug and alcohol-free for a longer period of time following their release from treatment than those whose

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treatment did not entail the contract approach. Also, for these veterans, full-time employment and income earned in part-time employment increased. A decrease in medical costs for non-alcohol related illnesses was also noted. VA monitoring of the program during fiscal years 1984-87 evidenced the continuing need for drug/alcohol abuse treatment and rehabilitation in the veteran community, particularly among Vietnam era veterans. VA success with the drug/alcohol program demonstrates the effectiveness of the contract approach in achieving treatment and rehabilitation goals, as well as the cost efficiency of operating the program using the contract modality.

Although we support the intent of S. 2105, we recommend that the Committee adopt instead a provision which would authorize the VA to operate this contract program on an ongoing basis. We have submitted a draft bill, provisions of which would accomplish that purpose, to the President of the Senate. Our proposal would also eliminate the requirement for costly special evaluations which were initially helpful in assessing program viability. Given the program's record of continued success, such evaluations are no longer cost-effective.

We estimate extension of the drug and alcohol treatment contract program, which is included in the President's 1989 budget, will result in costs of $10.1 million in Fiscal Year 1989 and $50.6 million over the next five fiscal years. For the period of extension authorized by S. 2105 (4 years), we estimate program cost of $40.5 million. These figures were computed on the basis of data collected from FY 1985: identifying a per diem of $27 a day and participation of 7500 veterans per year for an average length of stay of 50 days.

Recognizing the established need to provide treatment and rehabilitation services for veterans with drug and alcohol disorders and the cost effectiveness of the contract approach, we express our support for the intent of S. 2105 and urge adoption of our own legislative proposal which would permit VA to contract on an ongoing basis for these services.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's Program to the submission of this report on S. 2105 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 25 1988

Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration (VA) on S. 1805, 100th Congress, a bill "[t]o protect certain pensions and other benefits of veterans and survivors of veterans who are entitled to damages in the case of In re: 'Agent Orange' Product Liability Litigation." This measure generally provides that settlement payments resulting from the Agent Orange product-liability litigation will not be considered in determining VA-pension eligibility or rates, or eligibility for hospital and nursing home care.

For the reasons set forth below, the Veterans Administration opposes enactment of S. 1805.

S. 1805 provides that any payments received as a result of the settlement approved on January 7, 1985, by the United States District Court for the Eastern District of New York in the case In re: "Agent Orange" Product Liability Litigation (Case Number MDL No. 381) may not be considered for the purpose of three determinations made by the Administrator of Veterans' Affairs in individual cases: (1) eligibility for a need-based pension under chapter 15 of title 38 of the United States Code; (2) the amount of such pension; and (3) the amount of attributable income under section 622 of title 38, for the purpose of determining (under section 610(a)(1)) ability to defray expenses of medical care and consequent eligibility for hospital or nursing home care for a non-service-connected disability. The cited litigation, as you know, resulted in a number of major corporations, which had manufactured Agent Orange, agreeing to pay $180 million into a settlement fund to be distributed among various members of the plaintiff class.

Although S. 1805 affects provisions of title 38 of the United States Code, it does not amend title 38 and would constitute a freestanding provision of law if enacted. As a technical

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matter, we oppose in principle any legislation which affects title 38 without making the necessary amendments to its text. Legislation thus enacted would defeat the purpose of codification and lead to confusion, misinterpretation, and possible unwitting conflict between provisions.

On a substantive level, we are unaware of any reason to treat the proceeds from the Agent Orange settlement any differently from the proceeds of any other settlement, or any other income, for the purpose of determining entitlement to need-based veterans' benefits. S. 1805, if enacted, would be discriminatory in favor of claimants receiving income from the Agent Orange settlement and would give rise to demands that other categories of income not be considered in determining entitlement to benefits. In fact, there is no difference in the need status of persons receiving this type of income from that of other claimants who might receive a court settlement in a different type of tort suit, whose countable income for pension and other purposes would include the settlement received.

Moreover, any assertion that the settlement proceeds constitute payment for injuries incurred in the military service and are therefore deserving of special consideration would be meritless. There has been no admission of liability on the part of the chemical companies and no determination of cause and effect has been made between any alleged exposure to Agent Orange and the subsequent development of adverse health effects. Further, the best scientific evidence currently available makes it extremely unlikely that such a cause-and-effect relationship will ever be found for the disabilities sustained by the class members, with the possible exception of chloracne, as the trial court and court of appeals recognized. See In re "Agent Orange" Product Liability Litigation, 597 F. Supp. 740, 749, 775 (E.D.N.Y. 1984), aff'd, 818 F.2d 145, 149, 171-72 (2d Cir. 1987), cert. denied, 108 S. Ct. 695 (1988). Finally, the VA has in effect regulations for the granting of service-connected benefits for disabilities related by sound scientific and medical evidence to exposure to Agent Orange, as mandated by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law No. 98-542, 98 Stat. 2725, 38 U.S.C. § 354 note), enacted on October 24, 1984. In the event that there is a sound scientific and medical basis for establishing a nexus between exposure in service and a particular disability, a veteran is able to secure compensation from the VA for such disability under section 3.311a of title 38 of the Code of Federal Regulations.

The provisions in S. 1805 relating to VA pensions, in particular, are contrary to the basic purpose of the VA pension program, which is to provide benefits based upon need. After the pension program was extensively examined by the Congress in 1978, Public Law 95-588 was enacted, in order to eliminate inequities, anomalies, and inconsistencies which had developed under prior pension laws. Exclusion-of-income provisions such as those contemplated by the instant bill would result in different eligibility determinations or rates being applied to claimants who really have identical incomes, but from different sources--one of the anomalies which Public Law 95-588 sought to correct. A review of the categories of excludable income retained in section 503 of title 38, United States Code, reveals that exclusion of Agent Orange settlement proceeds would be completely out of character with the few, limited income exclusions which were retained when the section was amended.

We would also note that the provision relating to hospital-care entitlement is somewhat duplicative of existing provisions of law. Such care is currently provided to veterans for service-connected disabilities. It is also being provided, through September 30, 1989, to Vietnam veterans exposed in service to dioxin (or to a toxic substance found in a herbicide or defoliant) under subsections (a)(1)(G) and (e)(1)(A) of section 610 of title 38, unless the disability is found to have resulted from a cause other than the exposure.

We are unable to provide a cost estimate for this proposal due to the lack of specific data on the number of veterans or their survivors who would lose pension eligibility, or have their pension payment reduced, because they received a settlement from the cited litigation.

In view of the foregoing, we oppose enactment of S. 1805.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1805 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUN 22 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration on S. 2207, 100th Congress, a bill "To amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to provide assistive simians and dogs to veterans who, by reason of quadriplegia, are entitled to disability compensation under laws administered by the Veterans' Administration."

S. 2207 would amend 38 U.S.C. § 614 to authorize VA to provide simian aides and assistive dogs to veterans entitled to disability compensation for quadriplegia. It also would authorize payment of travel expenses incurred by the veteran in becoming adjusted to the animal. VA is deeply committed to providing all medical and rehabilitative services needed by service-connected spinal cord injured veterans. In studying this legislation, however, we believe a different approach is needed to properly explore the development and use of animals to assist the severely disabled.

In the area of simian aides, we welcome the progress which has been made in this work, and note that VA is proud to have supported it financially. However, there are many practical problems which lie ahead. Some 2,350 veterans receive compensation for loss of use of upper and lower extremities. There is no indication of the availability of significant numbers of trained animals being held for VA placements. Undoubtedly, it would be many years before those seeking such help could get it. Enactment of S. 2207 would surely raise some false expectations. Still more important, the feasibility of home placement and the procedures for training the veteran to use the simian aide have not been proven or developed to serve a national veteran population.

Some of these same questions arise in connection with the proposal to provide specially trained dogs. In that regard, it also bears noting that trained dogs would be of limited use to quadriplegic veterans because of the patients' severe limitations and the limited capacities of the animal.

The use of assistive animals for the catastrophically disabled has appeal. The VA has supported the valuable research done on simian aides, and we believe it is important to continue to support that particular work. In light of the practical problems we have highlighted in connection with launching a full program at this time, we do not support enactment of S. 2207. However, we would recommend that the Committee consider the establishment of a pilot program to permit development efforts and testing of the feasibility and effectiveness of providing assistive animals for catastrophically disabled veterans.

We estimate the cost of enactment of S. 2207 to be some $.49 million in Fiscal Year 1989, and approximately $2.1 million over five fiscal years.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2207 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUN 29 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration and our estimate of costs concerning S. 2383, a bill "To amend title 38, United States Code, to extend eligibility for education benefits under the Vietnam-era GI bill to certain service academy and Senior Reserve Officer Training Corps graduates, to permit students using Veterans' Administration educational assistance one instance of course withdrawal without a requirement to repay benefits, and to provide tutorial assistance for Post-Vietnam Era Educational Assistance Program and Montgomery GI bill participants, and for other purposes."

Mr. R. J. Vogel, Chief Benefits Director, presented a statement of the Veterans Administration's position on the subject bill when he testified before your Committee on May 25, 1988. As to section 2 of the bill, the Agency supports extending eligibility for noncontributory GI Bill education benefits to 1977 service academy graduates, but not to 1978 service academy and SROTC program graduates, as well. The Agency supports section 3 of S. 2383 which permits one instance of course withdrawal without a requirement to repay the benefits received for the course. The Administration, further, supports section 4 of the bill providing for tutorial assistance under the Montgomery GI Bill and under VEAP, but believes entitlement should be charged. We defer to DOD on the merits of the portion of the bill pertaining to the Montgomery GI Bill-Selected Reserve since matters affecting that program would be within their jurisdiction. For your convenience, we are enclosing a copy of Mr. Vogel's prepared statement.

We estimate that, with the exception of section 3, enactment of the S. 2383 provisions would result in benefits cost of less than $1 million in any fiscal year, as well as administrative costs of less than $100,000 in any fiscal year. We estimate that enactment of section 3 of the bill, which would allow a one-time course withdrawal without repayment of benefits, would result in benefits cost of $4 million in Fiscal Year 1989, and $24.5 million for the first 5 fiscal years. We, further, estimate that section 3 would result in administrative savings of less than $100,000 in any year.

As you requested, we are enclosing a detailed 5-year cost estimate, together with the assumptions and methodology used in arriving at this estimate.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2383 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

Enclosures

Cost Estimate, S. 2383, 100th Congress

The only provision of this bill that would have a significant cost is section 3 which allows a one-time course withdrawal without repayment of benefits. The cost of this provision would be:

Fiscal Year	Benefit Cost ($000)
1989	$ 4,000
1990	4,200
1991	4,300
1992	5,600
1993	6,400
	$24,500

This provision would result in administrative savings of less than $100,000 in any year.

The cost of granting chapter 34 benefits to certain academy and Senior ROTC graduates would be minimal; i.e., less than $1 million in any fiscal year. It is unlikely that any significant number of 1977 or 1978 service academy or Senior ROTC graduates would have enrolled in the chapter 32 program since all of these individuals have obtained a college degree.

Under existing legislation, the VA has been paying about $200,000 per year for tutorial assistance for chapter 34 veterans. Extending this benefit to chapters 30, 106, and 32 would result in additional costs of significantly less than $500,000 a year since the estimated population of these three programs in future years is only slightly greater than the 1987 population of chapter 34 trainees.

METHODOLOGY

a) S. 2383, 100th Congress; the "Veterans' Education Benefits Amendments of 1988."

b) This bill would extend eligibility for noncontributory GI Bill education benefits to certain 1977 and 1978 service academy and 1978 Senior ROTC graduates who had participated in the chapter 32 program, permit one instance of course withdrawal (up to 6 credit hours) without a requirement to repay the benefits received for the course, and raise the rates for tutorial assistance and extend this benefit to trainees participating under the Montgomery GI Bill and under VEAP.

c) Five-Year Cost - See cost estimate.

d) Employment Requirements - None.

e) Change in caseload - None.

f) Methodology - Section 3 of this bill which allows a one-time withdrawal without repayment of benefits is the only section with a significant cost. A 1986 study of chapter 34 debts indicated that 60.5 percent of all newly created debt was established because beneficiaries did not provide the Agency with mitigating circumstances for receipt of nonpunative grades. Since this proposal would excuse a single instance of receiving up to six semester hours (half-time training) of nonpunative grades, the 60.5 percent figure was reduced by one-third to approximately 40.4 percent to take into account those individuals training at greater than the half-time rate for whom some portion of their payments would be subject to repayment. This percentage was then applied to our most recent estimate of education overpayments (establishments) to determine the amount of payment that would no longer be subject to debt collection activity. The results were as follows (dollars in thousands):

Fiscal Year	Receivables Established	x 40.4%
1989	$40,800	$16,500
1990	30,000	12,100
1991	21,000	8,500
1992	25,000	10,100
1993	28,000	11,300

The true cost of this proposal is the lost collections from overpayments not being established.

2.

The September 30, 1987 COIN/CARS 0045, the CARS Collection Aging Report, was utilized to determine a typical payback cycle for currently existing education overpayments. This report indicates that 24.3 percent of overpayments are recouped in the first year, 7.9 percent in the second year, 7.2 percent in the third year, 8.9 percent in the fourth year, and 7.5 percent in the fifth year. Applying these percentages to the establishments developed above yields the following cost of this proposal (dollars in thousands):

Fiscal Year	Establishments Affected	Amount no longer recovered 1989	1990	1991	1992	1993
1989	$16,500	$4,000	$1,300	$1,200	$1,500	$1,200
1990	12,100	...	2,900	1,000	900	1,100
1991	8,500	...	...	2,100	700	600
1992	10,100	...	...	...	2,500	800
1993	11,300	...	...	...	...	2,700
Total		$4,000	$4,200	$4,300	$5,600	$6,400

g) Other assumptions - No other assumptions were made.

**Office of the
Administrator
of Veterans Affairs**

Washington DC 20420

**Veterans
Administration**

JUL 1 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration on three separate bills. S. 2462 is a bill "To amend title 38, United States Code, to improve various aspects of Veterans' Administration health-care programs, to provide certain new categories of veterans with eligibility for readjustment counseling from the Veterans' Administration, to extend the authorizations of appropriations for certain grant programs and to revise certain provisions regarding such programs, to revise certain provisions relating to the personnel system of the Department of Medicine and Surgery, and for other purposes." S. 2463 is a bill "To amend title 38, United States Code, to improve the capability of Veterans' Administration health-care facilities to provide the most effective and appropriate services possible to veterans suffering from mental illness, especially conditions which are service-related, through the designation of centers of mental illness research, education, and clinical activities at up to five of its medical centers, and for other purposes." S. 2446 is a bill "To amend title 38, United States Code, to extend for one year the authorization of the Veterans' Administration to furnish respite care to certain chronically ill veterans and to extend the due date for a report on the results of an evaluation of furnishing such care."

The VA's General Counsel, Mr. Donald L. Ivers, testified on S. 2462, S. 2463, and S. 2446 at a hearing before the Senate Veterans' Affairs Committee on June 16, 1988. Mr. Ivers' written statement submitted to the committee at the hearing constitutes VA's report on the three bills. We will send cost estimates on the three bills when they are available.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2462, S. 2463, and S. 2446, to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

"America is #1—Thanks to our Veterans"

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUL 1 8 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration on S. 2511, a bill "To establish a pilot program for providing assistive monkeys to certain veterans who have service-connected disabilities and are quadriplegic; and for other purposes."

S. 2511 would require VA to establish and conduct during Fiscal Years 1989 through 1991, two pilot programs under which the Agency would provide assistive monkeys and signal dogs respectively to certain disabled veterans. The first program would require VA to provide simians to 20 quadriplegic veterans who have service-connected disabilities rated 50 percent or more disabling. VA would also assist 20 other quadriplegic veterans in obtaining monkeys, but the Agency would not actually pay for the animals. Under the second program, VA would provide assistive signal dogs to 20 veterans with service-connected hearing impairments. VA would be required to evaluate both pilot programs and report to the Congress on the evaluations.

VA is deeply committed to providing all medical and rehabilitative services needed by service-connected spinal cord injured veterans, and we are pleased to have financially supported research in the use of simians for assisting these catastrophically disabled persons. The enactment of legislation authorizing a pilot program to provide simians is an excellent approach to further testing the feasibility and effectiveness of using animals to meet the needs of the targeted population. The pilot program would greatly assist VA in learning about, and resolving many of the problems we anticipate might occur in providing the animals to veterans, e.g., training of the veteran in becoming adjusted to working with the animal, identifying necessary veterinary care, learning of the need for retraining if a placement is unsuccessful, and determining the actual costs of providing this benefit. If this measure were revised to authorize rather than mandate the proposed simian pilot program, we would support it.

We question the need for the second pilot program, however, which would provide signal dogs for hearing impaired veterans. In our experience not many hearing impaired veterans actually use or would benefit by using signal dogs. They do not appear to be particularly useful in the successful rehabilitation of deaf individuals, and the kinds of services provided by these animals can be met by the multitude of electronic devices which amplify sounds or otherwise signal hearing impaired individuals of various occurrences. We have adequate legal authority to provide these devices. Finally, we don't believe the kinds of questions which suggest the need for a simian pilot program exist for signal dogs.

We estimate the costs of this bill, if enacted, would be approximately $243 thousand in the first fiscal year, and $712 thousand for the three years for which the programs are authorized.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2511 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

The bills listed below were introduced by the Committee Chairman at the Administration's request made in letters dated as shown and printed in the Congressional Record as shown.

Bill number	Date of letter of transmittal	Congressional Record citation	
		Page	Date
S. 2267	April 1	S3722	April 11.
S. 2268	April 1	S3724	April 11.
S. 2294	April 7	S4193	April 18.
S. 2307	April 12	S4514	April 21.
S. 2394	May 6	S5822	May 13.
S. 2419	May 3	S6250	May 19.
S. 2464	May 26	S7105	May 27.

On December 17, 1987, the Chairman requested the views of the Department of Defense (DOD) on S. 1692 and S. 1787; on May 12, 1988, DOD's views on S. 2383; and on June 17, 1988, the VA's views on S. 2459. By the date on which this report was filed, the agencies had not submitted reports on those measures.

By letters dated as indicated, the Chairman requested the VA's views on the following bills: S. 2396 (May 20), S. 2521 (June 16), S. 2446 (June 17), and S. 2463 (June 17). In the cases of S. 2446 and S. 2463, the agency has informally requested that the VA's testimony on these bills at the Committee's June 16, 1988, hearing be used in lieu of agency report; in the cases of S. 2396 and S. 2521, the VA is developing but, as of the date on which this report was filed, had not yet submitted reports on the bills. In lieu of such reports, the excerpts from the VA's written testimony at the June 16 hearing giving the agency's views on these four bills are reprinted below.

STATEMENT OF
DONALD L. IVERS
GENERAL COUNSEL
VETERANS ADMINISTRATION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JUNE 16, 1988

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the array of legislative initiatives on your agenda today. In that regard, we very much appreciate your introduction and consideration of a number of VA proposals affecting various Agency programs.

* * * * * * *

S. 2463 -- "MIRECC'S"

S. 2463 would call for the establishment and operation of up to five VA health care facilities as centers for mental illness research, education, and clinical care (subject to the appropriation of sufficient funds for that purpose.)

It is not clear that VA needs a statutory basis to start up such a program. Also we would oppose language that would require establishing an automatic priority for any category or source of research proposals, as this measure proposes.

S. 2396 -- Expansion of the Vietnam Era

S. 2396 would expand the legal definition of the term "Vietnam era." For purposes of title 38, the Vietnam era is currently defined as beginning August 5, 1964, the date of the Gulf of Tonkin Resolution. The effect of this legislation would be extension of the beginning date to include the period from February 28, 1961 through August 4, 1964, for veterans who served in the Republic of Vietnam during that time. February 28, 1961, is the date after which, pursuant to Public Law 89-257, service in Vietnam and the waters or lands adjacent thereto qualified Americans to receive decorations from foreign governments. Those veterans served under adverse conditions akin to wartime conditions, and should be eligible for benefits for which wartime service, or Vietnam era service, is a requirement. Thus, we favor enactment of this measure.

Veterans covered would become potentially eligible for several benefits. Principally, they could receive nonservice-connected pension benefits if they meet disability, income, and net-worth requirements. Eligibility could also arise for certain burial benefits, vocational counseling, readjustment counseling services, medical benefits under Public Law 97-72, and loan guaranty benefits in certain cases. In addition, survivors of the veterans covered by this provision would be potentially eligible for nonservice-connected death pension benefits if they meet relationship, income, and net worth requirements. Assuming that current Vietnam-era veteran and survivor participation rates would be similar for these potentially new Vietnam-era veterans and survivors, and given that the number of individuals to be affected is estimated to be fewer than 20,000, the estimated cost for these additional benefits is less than $1 million for each of the next five fiscal years with administrative costs of $100,000 for each fiscal year.

* * * * * * *

Respite Care

Congress authorized VA in Public Law 99-576 to establish a program under which it would provide "respite" care to veterans eligible for benefits under 38 U.S.C. § 610. Authorization for such services expires on September 30, 1989. Respite care allows VA to provide chronically ill veterans who reside athome with brief, planned periods of care in VA facilities in order to provide members of the veterans' families with some relief from the physical and emotional rigors of continuous home care. VA has just begun to gain some experience with respite care. It is expected that this program will help allow veterans to remain at home in the care of their loved ones, rather than requiring them to be institutionalized for protracted periods.

We support an extension of that authority but urge the adoption of our own proposal in S. 2294, which would authorize this benefit for another two years. S. 2446 would only extend the authority for a single year. S. 2294 would also extend by two years the date by which VA must report to the Congress on its evaluation of the new respite care program, allowing for a more thorough and complete analysis of the program's effectiveness. Extension of the respite care program for two years would not result in significant costs.

* * * * * * *

ADDITIONAL VIEWS OF SENATOR MURKOWSKI, SENATOR SIMPSON, SENATOR THURMOND AND SENATOR STAFFORD ON SECTIONS 205, 601, AND 605 OF S. 2011

INCOME EXCLUSION FOR CERTAIN PAYMENTS

Section 205, if enacted, would exclude the proceeds of lawsuits based on injuries or disabilities allegedly arising from occurrences while a veteran was on active duty from income considered in VA determinations of eligibility for, or the amount of, means-tested veterans' benefits including non-service-connected disability and survivor's pensions, and certain decisions establishing priority for VA medical care and parents' DIC.

One of the practical effects of enactment of this provision would be to ensure that payments received as a result of the settlement of the class action lawsuit against the manufacturers of Agent Orange, *In re Agent Orange*, M.D.L. 381 (E.D.N.Y.), will have no effect on Vietnam veterans receiving non-service-connected VA pensions as the result of non-traumatic total disabilities which developed subsequent to their service. This provision is, in fact, derived from S. 1805 which was introduced to accomplish that specific end.

We are concerned that this provision will also have the unintended effect of undermining the foundation of the non-service-connected pension benefit. In enacting this benefit, the Congress has, in effect, established a guaranteed minimum income for old (over 65) or disabled wartime veterans and the survivors of wartime veterans. In the case of disability, the origin or nature of the disability is immaterial (assuming it is not the result of the veteran's own willful misconduct). This benefit pays qualified veterans the difference between their actual household income and the maximum pension amount, currently $6,214 per year for a veteran without dependents.

One of the pillars upon which this program rests is the principle that all income available to the veteran, from whatever source, is counted when determining eligibility for or rate of, payment. The only significant exception is means-tested welfare or charity. In enacting this program, the Congress superseded a program which had become riddled with exceptions. The current pension program ensures that all wartime veterans will have an equal floor to their income, and that VA payments will be targeted at those who are most in need.

We are concerned that Section 205 will erode both the equity and integrity of the pension program by creating a special and separate class of veterans and survivors allowed to receive additional income outside of the framework of the otherwise universal pension income computation rules. In addition, we are concerned that enactment of this exception will inevitably lead to pressure to enact other exceptions. If exceptions proliferate, the justification for, and support of, this program may well erode.

We do not accept the logic that the exception can be justified by a link between the disability and the veteran's service. The law already requires that disabilities originating during active duty, even for non-duty causes such as an off-duty automobile accident, shall be considered service-connected. Veterans are entitle to VA disability compensation for service-connected disabilities without regard to the amount of their income, including the proceeds of any lawsuit arising from the incident which created their disability. If such a link were justified in this instance, these veterans would already be eligible for service-connected disability compensation under existing law.

The exception created by Section 205 is an attempt to forge a link between disabilities now suffered by certain plaintiffs in one particular lawsuit and their military service. It is a link that has not been shown to exist in fact. The funds to be distributed arise from a settlement and not from a court's finding of any liability or causation. If there were any evidence of proof of a link, disability compensation, which is not needs-tested, would be presumably payable.

Furthermore, this exception has been expanded by the Committee beyond the original provisions of S. 1805, from which it was drawn. The Committee expanded the exception to cover the proceeds of any lawsuit arising from events alleged to have occurred while on active duty. The integrity of the needs-based pension system is violated by creating an exception for plaintiffs in the Agent Orange case. The extension of this exception to the proceeds of lawsuits yet unfiled further damages the pension system. It is well to remember that the pension system exists only to assure that no veteran receives less than a minimum income. All income received by the veterans must count against the pension. This exception plays havoc with that system.

We are particularly concerned with the fact that section 205 includes dependency and indemnity compensation to parents ("parents' DIC") under U.S.C. 415, as one of the VA means-tested benefits to which this exception applies.

We believe including parents' DIC will have effects which are unintended and undesirable.

The recipients of parents' DIC are low-income parents of individuals who die while on active duty or due to service-connected causes. Enactment of this provision will create two classes of parents recipients: those whose children's deaths were based on a cause for which a suit for damages may succeed and those whose deaths resulted from a cause where no lawsuit is possible. Thus, the parents of a servicemember killed in combat would be permitted less total income than the parent of a servicemember who dies as the result of an off-duty accident. The parent of a servicemember run over by a negligently operated private automobile would be permitted a higher total income than the parent of a servicemember run over by a tank while on maneuvers. We believe this result is as paradoxical as the situation the provision is intended to correct.

While we did not oppose this provision in Committee, we remain committed to the basic underlying principle of the pension program that all income should be included in income computation, and do not view this provision as a precedent for additional exclusions.

CARE FOR POST-TRAUMATIC STRESS DISORDER

Section 601 of the Committee bill would provide an entitlement to inpatient and outpatient care for the treatment of Post-Traumatic Stress Disorder (PTSD) for veterans who served in Vietnam or the Vietnam Theater of Operations and who have been diagnosed with PTSD even though the VA has not determined that their PTSD is related to service. We have serious concerns about this provision.

First, we believe it is inappropriate to designate in law a requirement that the VA treat a single specified disorder for veterans of a single war. This proposed entitlement simply ignores combat veterans of other periods. Since PTSD is not unique to the Vietnam experience, and while we deeply admire and respect Vietnam veterans, we are baffled at the insistence that veterans of Vietnam be put ahead of the veterans of Iwo Jima, Normandy and Inchon.

In the past, the Congress has not seen fit to require treatment, as though the disability were service-connected, for a specific disease for veterans of a specific war. It is simply inappropriate to require the VA to treat PTSD—but no other psychological disorders—for only Vietnam veterans.

We believe that Section 601 sets a terrible precedent. This provision invites inequity by sending a clear message to combat veterans of other wars with similar or different disorders—such as combat fatigue or other service-related ailments—to step to the back of the line. Frankly, we find it difficult to understand why this blatant disparate treatment is thought to be a good idea.

Additionally, these Vietnam veterans would not be subject to the means test income requirements for the treatment of a non-service-connected disability. And an unfortunate result may be that the veterans' ability to defray the cost of treatment for these non-service-connected disabilities would not be a factor in determining priority for mental-health treatment.

The reality of the situation is that there are limited VA health-care dollars. The proponents argue that this entitlement will be paid for by simply "shifting resources." But which resources? Resources currently devoted to AIDS treatment? To long-term care for the elderly? To care for spinal cord injuries?

The tragedy of this provision is this: There is not a whit of evidenced that this provision would do the slightest bit of good for anyone. It is not going to shorten waiting lines at VA's PTSD units. It is not going to make money drop out of the sky. At best, it will raise the hopes of Vietnam veterans that immediate PTSD treatment will be provided. In effect, we are making a promise that the VA will provide care. If that promise cannot be realized—and we don't think it can be—then these veterans would have been better served if no entitlement for care was provided in the first place. During the Committee's July 14 hearing, we learned from

Vet Center team leaders that raising the false hopes of these veterans is perhaps the worst thing we could do.

The Congress has in the past and continues to strain the system by adding new priorities and obligations. In fact, in May 1988, the President signed the Veterans' Benefits and Services Act of 1988 which created new entitlements and VA programs costing more than $150 million annually. How can we continually require the VA to do more without providing additional funds?

ELIGIBILITY FOR READJUSTMENT COUNSELING

We are also very concerned about an aspect of Section 605 of the Committee bill which would expand eligibility for counseling through the Vet Center program to World War II and Korean veterans. Last year, we expressed our concerns about this provision both in Committee meetings, in the Committee report which accompanied this provision (S. Rept. 100-187, p. 117) and on the Senate floor. We remain concerned about this proposal.

It is important to keep in mind that Vet Centers are designed to provide counseling to assist Vietnam veterans in adjusting to civilian life. They are located in a storefront setting because Vietnam-era veterans—for whom the program was established—were alleged to be alienated from the VA.

Frankly, it is extremely difficult to believe that World War II and Korean veterans need to readjust to civilian life. Nor do we believe that they feel alienated from the Veterans' Administration. Let's put this group of veterans into perspective. World War II ended 42 years ago; the average age of its veterans is 66. The Korean war ended 33 years ago; its veterans' average age is 56.

These veterans are nearing the retirement age—and some have already reached it. We recognize that some of these veterans may have psychological problems associated with service. Some veterans may have problems which are just now manifesting as a result of stress associated with the aging process. These psychological problems may result from dealing with a death or serious illness of a spouse or other significant life changes such as retirement. But we believe their needs have been, and continue to be, met most appropritely through VA mental hygiene clinics and inpatient mental health treatment where health-care professionals stand ready to assist them.

So why Vet Centers? Why should they be the vehicle for providing these services? And what will be the cost of providing services through Vet Centers? Scarce medical care resources should not be spent on these types of "readjustment" services at a time when other needs go unmet.

We are simply perplexed by these proposals.

We find it ironic that there is a proposal to expand Vet Center eligibility to a group of veterans who are, frankly, more likely to be in need of acute medical and long-term care. At the same time, we are creating an entitlement to inpatient and outpatient care for Vietnam veterans whose needs were to have been met through the Vet Center program.

In addition, we seem to be working at cross-purposes. We are told that World War II and Korean veterans still suffer from the aftermaths of their military experience and that some have been diagnosed as having PTSD. If this is so, then why are we creating an entitlement for PTSD treatment (as provided in section 601 of the bill) for only Vietnam veterans? Are these veterans any less deserving?

Finally, we are led to believe that there is no additional cost associated with this provision. If Vet Centers have enough resources to provide these services to World War II and Korean veterans, perhaps they are underutilized by Vietnam veterans, who are, after all, the target population of that program. In other words, maybe Vet Centers have excess resources. We submit that at a time of limited health-care dollars and an urgent need for all types of care, including long-term care for elderly veterans, precious resources could be more efficiently utilized.

If we want to help veterans of World War II and Korea, we should address their real needs, and not propose legislation which seems to do little more than increase the client base for a single, specifically-directed program.

FRANK H. MURKOWSKI,
Ranking Minority Member.
ALAN K. SIMPSON.
STROM THURMOND.
ROBERT T. STAFFORD.

CHANGES IN EXISTING LAW MADE BY S. 2011 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5—UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter II—Executive Schedule Pay Rates

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§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.
Associate Administrator of the National Aeronautics and Space Administration.
Assistant Administrators, Agency for International Development (6).
Regional Assistant Administrators, Agency for International Development (4).
Under Secretary of the Air Force.
Under Secretary of the Army.
Under Secretary of the Navy.
Assistant Secretaries of Agriculture (7).
Assistant Secretaries of Commerce (11).
Assistant Secretaries of Defense (11).
Assistant Secretaries of the Air Force (3).
Assistant Secretaries of the Army (5).
Assistant Secretaries of the Navy (4).
Assistant Secretaries of Health and Human Services (4).
Assistant Secretaries of the Interior (6).
Assistant Attorney General (10).

Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.

Assistant Secretaries of State (15).

Assistant Secretaries of the Treasury (7).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (6).

General Counsel, Department of Education.

Inspector General, Department of Education.

Director of Civil Defense, Department of the Army.

Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.

Deputy Director of the Peace Corps.

Deputy Director of the United States Information Agency.

Assistant Directors of the Office of Management and Budget (3).

General Counsel of the Department of Agriculture.

General Counsel of the Department of Commerce.

General Counsel of the Department of Defense.

General Counsel of the Department of Health and Human Services.

Solicitor of the Department of the Interior.

Solicitor of the Department of Labor.

General Counsel of the National Labor Relations Board.

Legal Adviser of the Department of State.

General Counsel of the Department of the Treasury.

First Vice President of the Export-Import Bank of Washington.

Members, Council of Economic Advisers.

Members, Board of Directors of the Export-Import Bank of Washington.

Members, Federal Communications Commission.

Member, Board of Directors of the Federal Deposit Insurance Corporation.

Members, Federal Home Loan Bank Board.

Members, Federal Energy Regulatory Commission.

Members, Federal Trade Commission.

Members, Interstate Commerce Commission.

Members, National Labor Relations Board.

Members, Securities and Exchange Commission.

Members, Board of Directors of the Tennessee Valley Authority.

Members, Merit Systems Protection Board.

Members, Federal Maritime Commission.

Members, National Mediation Board.

Members, Railroad Retirement Board.

Director of Selective Service.

Associate Director of the Federal Bureau of Investigation, Department of Justice.

Members, Equal Employment Opportunity Commission (4).

Chief of Protocol, Department of State.

Director, Community Relations Service.

Members, National Transportation Safety Board.

General Counsel, Department of Transportation.

Deputy Administrator, Federal Aviation Administration.

Assistant Secretaries of Transportation (4).

Deputy Federal Highway Administrator.

Administrator of the St. Lawrence Seaway Development Corporation.

Assistant Secretary for Science, Smithsonian Institution.

Assistant Secretary for History and Art, Smithsonian Institution.

Deputy Administrator of the Small Business Administration.

Assistant Secretaries of Housing and Urban Development (8).

General Counsel of the Department of Housing and Urban Development.

Commissioner of Interama.

Federal Insurance Administrator, Federal Emergency Management Agency.

Executive Vice President, Overseas Private Investment Corporation.

Members, National Credit Union Administration Board (2).

Members, Postal Rate Commission (4).

Members, Occupational Safety and Health Review Commission.

Deputy Director of the Office of Drug Abuse Policy.

Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).

Members, Consumer Product Safety Commission (4).

Commissioner of Social Security, Department of Health and Human Services.

Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.

Administrator for Federal Procurement Policy.

Members, Commodity Futures Trading Commission.

Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.

Executive Director for Operations, Nuclear Regulatory Commission.

President, Government National Mortgage Association, Department of Housing and Urban Development.

Associate Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.

Commissioner of Immigration and Naturalization, Department of Justice.

Director, Bureau of Prisons, Department of Justice.

Assistant Secretaries of Energy (8).

General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.

Administrator, Energy Information Administration, Department of Energy.

Inspector General, Department of Energy.

Director, Office of Energy Research, Department of Energy.

Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.

President, National Consumer Cooperative Bank.

Assistant Secretary for International Narcotics Matters, Department of State.

Inspector General, Department of Health and Human Services.

Inspector General, Department of Agriculture.

Special Counsel of the Merit Systems Protection Board.

Inspector General, Department of Housing and Urban Development.

Chairman, Federal Labor Relations Authority.

Inspector General, Department of Labor.

Inspector General, Department of Transportation.

Inspector General, Veterans' Administration.

Deputy Director, Institute for Scientific and Technological Cooperation.

Director of the National Institute of Justice.

Director of the Bureau of Justice Statistics.

Chief Counsel for Advocacy, Small Business Administration.

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Inspector General, Department of Defense.

Assistant Administrator for Toxic Substances, Environmental Protection Agency.

Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

Assistant Administrators, Environmental Protection Agency (8).

Director of Operational Test and Evaluation, Department of Defense.

Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency (2).

Administrator of the Health Care Financing Administration.

Director, National Bureau of Standards, Department of Commerce.

Assistant Directors, United States Arms Control and Disarmament Agency (4).

Inspector General, United States Information Agency.

Inspector General, Department of State.

Director of Defense Research and Engineering.

Chairman, Board of Veterans' Appeals.

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TITLE 10—UNITED STATES CODE

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Subtitle A—General Military Law

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PART III—TRAINING

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CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

* * * * * * *

§ 2131. Educational assistance program: establishments; amount

(a) * * *

* * * * * * *

(c)(1) [Educational] *Except as provided in paragraph (3) of this subsection, educational* assistance may only be provided under this chapter for pursuit of a program of education at an institution of higher learning and may not be provided to a person after the person has completed a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study.

* * * * * * *

(3) Notwithstanding the provisions of paragraph (1) of this subsection, a person entitled to educational assistance under this chapter shall also be entitled to tutorial assistance under this chapter in same manner and amount, to the same extent, and under the same conditions as provided under section 1692 of title 38, except that such person's period of entitlement under this chapter shall be charged with one-half month for each $140 of tutorial assistance received.

§ 2132. Eligibility for educational assistance

(a) A person who—

(1) after June 30, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before completing initial active duty for training has received a secondary school diploma (or an [equivalency certificate);] *equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary);*

is entitled to educational assistance under section 2131 of this title.

* * * * * * *

§ 2136. Administration of program

(a) * * *

* * * * * * *

(b)*(1)* Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), [and 1683] *1683, and 1691(a)(2)* of chapter 34 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1780(a)(5), 1780(b), 1786, 1787(b)(1), and 1792) shall be applicable to the provision of educational assistance under this chapter. The term "eligible veteran" as used in those provisions, shall be deemed for the purpose of the application of those provisions to the chapter to refer to a person eligible for educational assistance under the chapter.

(2) Educational assistance provided under this chapter pursuant to the provisions of section 1691(a)(2) of title 38 shall be provided without charge to entitlement for the first five months of full-time pursuit consisting of such course or courses.

* * * * * * *

TITLE 38—UNITED STATES CODE

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

CHAPTER 1—GENERAL

* * * * * * *

§ 101. Definitions

For the purposes of this title—

(1) * * *

* * * * * * *

(29) The term "Vietnam era" [means the period beginning August 5, 1964, and ending on May 7, 1975] *means—*

(A) the period beginning February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during such period; and

(B) the period beginning August 5, 1964, and ending on May 7, 1875, in all other cases.

* * * * * * *

CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

* * * * * * *

SUBCHAPTER III—VETERANS' ADMINISTRATION REGIONAL OFFICES; EMPLOYEES

§ 230. Central and regional offices

(a) * * *

*   *   *   *   *   *   *

(b) The Administrator may exercise authority under this section in territory of the Republic of the Philippines until September 30, [1988.] *1992.*

*   *   *   *   *   *   *

PART II—GENERAL BENEFITS

*   *   *   *   *   *   *

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

*   *   *   *   *   *   *

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

*   *   *   *   *   *   *

§ 312. Presumptions relating to certain diseases and disabilities

(a) * * *

*   *   *   *   *   *   *

(d) For the purposes of section 310 of this title and subject to the provisions of section 313 of this title, in the case of a veteran who served in the active military, naval, or air service in the Republic of Vietnam during the Vietnam era, the disease of chloracne, where it or another acneform skin disease consistent with chloracne became manifest to a degree of 10 percent or more within one year after the last date on which the veteran served in the Republic of Vietnam during such era, shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

*   *   *   *   *   *   *

SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

*   *   *   *   *   *   *

§ 362. Clothing allowance

The [Administrator] *Administrator,* under regulations which the Administrator shall prescribe, shall pay a clothing allowance of $380 per year to each veteran who because of disability which is compensable under [the provisions of] this [chapter, wears or uses prosthetic or orthopedic appliance or appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such a veteran.] *Chapter—*

(A) wears or uses prosthetic or orthopedic appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such veteran, or

(B) uses medication which (i) has been prescribed for a service-connected skin condition, and (ii) the Administrator determines stains or otherwise damages the clothing of such veteran.

§ 363. Temporary program for trial work periods and vocational rehabilitation for certain veterans with total disability ratings

(a)(1) * * *

* * * * * * *

(2) For purposes of this section:

(A) The term "qualified veteran" means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities.

(B) The term "program period" means the period beginning on February 1, 1985, and ending on January 31, [1989.] *1990.*

* * * * * * *

CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

* * * * * * *

SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

* * * * * * *

§ 415. Dependency and indemnity compensation to parents

(a) * * *

* * * * * * *

(f)(1) In determining income under this section, all payments of any kind or from any source shall be included, except—

(A) payments of the six-months' death gratuity;

(B) donations from public or private relief or welfare organizations;

(C) payments under this chapter (except section 412(a)) and chapters 11 and 15 of this title and under the first sentence of section 9(b) of the Veterans' Pension Act of 1959;

(D) lump-sum death payments under title II of the Social Security Act (42 U.S.C. 401 et seq.);

(E) payments of bonus or similar cash gratuity by any State based upon service in the Armed Forces;

(F) payments under policies of servicemen's group life insurance, United States Government life insurance or national service life insurance, and payments of servicemen's indemnity;

(G) 10 percent of the amount of payments to an individual under public or private retirement, annuity, endowment, or similar plans or programs;

(H) amounts equal to amounts paid by a parent of a deceased veteran for—

(i) a deceased spouse's just debts,

(ii) the expenses of the spouse's last illness to the extent such expenses are not reimbursed under chapter 51 of this title, and

(iii) the expenses of the spouse's burial to the extent that such expenses are not reimbursed under chapter 23 or chapter 51 of this title;

(I) proceeds of fire insurance policies;

(J) amounts equal to amounts paid by a parent of a deceased vterans for—

(i) the expenses of the veteran's last illness, and

(ii) the expenses of such veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

(K) profit realized from the disposition of real or personal property other than in the course of a business;

(L) payments received for discharge of jury duty or obligatory civic duties;

(M) payments of annuities elected under subchapter I of chapter 73 of title [10.] *10;*

(N) payments which (i) are received in any twelve-month period beginning on December 1 in settlement of, or as the result of a judgment in, litigation based on a death alleged to have been incurred as a result of events that occurred during the active-duty service of the veteran concerned, and (ii) do not exceed the maximum annual rate payable under section 521(b), (c), or (f) of this title for a veteran with the same marital and parental status as the individual concerned.

* * * * * * *

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

* * * * * * *

SUBCHAPTER I—GENERAL

* * * * * * *

§ 503. Determinations with respect to annual income

(a) In determining annual income under this chapter, all payments of any kind or from any source (including salary, retirement or annuity payments, or similar income, which has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise) shall be included except—

(1) donations from public or private relief or welfare organizations;

(2) payments under this chapter;

(3) amounts equal to amounts paid by a spouse of a veteran for the expenses of such veteran's last illness, and by a surviving spouse or child of a deceased veteran for—

(A) such veteran's just debts,

(B) the expenses of such veteran's last illness, and

(C) the expenses of such veteran's burial to the extent such expenses are not reimbursed under chapter 23 of this title;

(4) amounts equal to amounts paid—

(A) by a veteran for the last illness and burial of such veteran's deceased spouse or child, or

(B) by the spouse of a living veteran or the surviving spouse of a deceased veteran for the last illness and burial of a child of such veteran;

(5) proceeds of fire insurance policies;

(6) profit realized from the disposition of real or personal property other than in the course of a business;

(7) amounts in joint accounts in banks and similar institutions acquired by reason of death of other joint owner;

(8) amounts equal to amounts paid by a veteran, veteran's spouse, or surviving spouse or by or on behalf of a veteran's child for unreimbursed medical expenses, to the extent that such amounts exceed 5 per centum of the maximum annual rate of pension (including any amount of increased pension payable on account of family members but not including any amount of pension payable because a person is in need of regular aid and attendance or because a person is permanently housebound) payable to such veteran, surviving spouse, or child;

(9) in the case of a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid by such veteran or surviving spouse for such course of education or vocational rehabilitation or training, including (A) amounts paid for tuition, fees, books, and materials, and (B) in the case of such a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course of education or vocational rehabilitation or training, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available);

(10) in the case of a child, any current-work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of—

(A) the lowest amount of gross income for which an income tax return is required under section 6012(a) of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)), to be filed by an individual who is not married (as determined under section 143 of such Code), is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(B) if the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by such child for such course of education or vocational rehabilitation or training, including the amount paid for tuition, fees, books, and [materials.] *materials; and*

(11) payments which (i) are received in any twelve-month period beginning on December 1 in settlement of, or as the result of a judgment in, litigation based on a disability or death alleged to have been incurred as a result of events that occurred during the active-duty service of the veteran concerned, and (ii) do not exceed the maximum annual rate payable under section 521(b), (c), or (f) of this title for a veteran with the same marital and parental status as the veteran concerned.

* * * * * * *

SUBCHAPTER II—VETERANS' PENSIONS

* * * * * * *

NON-SERVICE-CONNECTED DISABILITY PENSION

* * * * * * *

§ 524. Temporary program of vocational training for certain new pension recipients

(a)(1) * * *

* * * * * * *

(4) For the purposes of this section, the term "program period" means the period beginning on February 1, 1985, and ending on January 31, [1989.] *1990.*

(b)(1) * * *

* * * * * * *

(4) A veteran may not begin pursuit of a vocational training program under this subsection after the later of (A) January 31, [1989,] *1990*, or (B) the end of a reasonable period of time, as determined by the Administrator, following either the evaluation of the veteran under subsection (a) of this section or the award of pension to the veteran as described in subsection (a)(2) of this section. Any determination by the Administrator of such a reasonable period of time shall be made pursuant to regulations which the Administrator shall prescribe.

* * * * * * *

§ 525. Temporary protection of health-care eligibility

(a) * * *

* * * * * * *

(b) For the purposes of this seciton:

(1) The term "terminated by reason of income from work or training" means terminated as a result of the veteran's receipt of earnings from activity performed for remuneration or gain, but only if the veteran's annual income from sources other

than such earnings would, taken alone, not result in the termination of the veteran's pension.

(2) The term "program period" means the period beginning on February 1, 1985, and ending on January 31, [1989.] *1990.*

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

Sec.
601. Definitions.
602. [Presumption relating to psychosis.] *Special provisions relating to mental illness disabilities.*
603. Contracts for hospital care and medical services in non-Veterans' Administration facilities.

* * * * * * *

SUBCHAPTER I—GENERAL

* * * * * * *

§ 602. [Presumption relating to psychosis] *Special provisions relating to mental illness disabilities*

(a) For the purposes of this chapter, any veteran of World War II, the Korean conflict, or the Vietnam era who developed an active psychosis (1) within two years after discharge or release from the active military, naval or air service, and (2) before July 26, 1949, in the case of a veteran of World War II, before Febraury 1, 1957, in the case of a veteran of the Korean conflict, or before May 8, 1977, in the case of a Vietnam era veteran, shall be deemed to have incurred such disability in the active military, naval, or air service.

(b) Any veteran who—

(1) served on active duty in the Republic of Vietnam or elsewhere in the Vietnam theater of operations, and

(2) is diagnosed by the Chief Medical Director to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A).

§ 603. Contracts for hospital care and medical services in non-Veterans' Administration facilities

(a) When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Administrator, as authorized in section 610 or 612 of this title, may contract with non-Veterans' Administration facilities in order to furnish any of the following:

(1) Hospital care or medical services to a veteran for the treatment of—

(A) a service-connected disability; or

(B) a disability for which a veteran was discharged or released from the active military, naval, or air service.

(2) Medical services for the treatment of any disability of—

(A) a veteran discribed in section 612(a)(1)(B) of this title;

(B) a veteran described in section [612(a)(4)] *paragraphs (2), (3), or (4) of section 612(a)* of this title, for a purpose described in section 612(a)(5)(*B*) of this title;

(C) a veteran described in section 612(a)(3) (other than a veteran who is a former prisoner of war) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration Facilities.

* * * * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

§ 610. Eligibility for hospital, nursing home, and domiciliary care

(a)(1) * * *

* * * * * * *

(e)(1)(A) * * *

* * * * * * *

(3) Hospital and nursing home care and medical services may not be provided under or by virtue of subsection (a)(1)(G) of this section after [September 30, 1989.] *December 31, 1990.*

* * * * * * *

§ 612A. Eligibility for readjustment counselling and related mental health services

(a)*(1)(A)* Upon the request [of any veteran who served on active duty during the Vietnam era, the Administrator shall, within the limits of Veterans' Administration facilities, furnish counseling to such veteran to assist such veteran in readjusting to civilian life. Such counseling shall include a general mental and psychological assessment to ascertain whether such veteran has mental or psychological problems associated with readjustment to civilian life.] *of—*

(i) any veteran who served on active duty during the Vietnam era, or

(ii) any veteran who served on active duty after May 7, 1975, in an area during a period in which hostilities (as defined in paragraph (2) of this subsection) occurred in such area,

the Administrator shall furnish counseling to assist such veteran in readjusting to civilian life.

(B) Upon the request of any veteran who served on active duty during World War II or the Korean conflict, the Administrator may furnish counseling to such veteran in overcoming any psychological problems associated with such veteran's service during such periods.

In furnishing counseling under this paragraph, the Administrator shall place particular emphasis on the needs of those who engaged in combat with the enemy. Such counseling shall include a general mental and psychological assessment to ascertain whether such veteran has mental or psychological problems associated with such veteran's active military, naval, or air service.

(2) For the purposes of subparagraph (1)(A)(ii) of this subsection, the term "hostilities" means a situation in which members of the Armed Forces were, as determined by the Administrator in consultation with the Secretary of Defense, subjected to danger from armed conflict comparable to the danger to which members of the Armed Forces have been subjected in battle with the enemy during a period of war.

* * * * * * *

(e)(1) In furnishing counseling and related mental health services under subsections (a) and (b) of this [section,] *section to a veteran described in paragraph (1)(A) of such subsection (a),* the Administrator shall have available the same authority to enter into contracts with private facilities that is available to the Administrator (under sections 612(a)(1)(B) and 603(a)(2) of this title) in furnishing medical services to veterans suffering from total service-connected disabilities.

* * * * * * *

§ 620A. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities

(a)(1) * * *

* * * * * * *

[(e) The Administrator may not furnish care and treatment and rehabilitative services under subsection (a) of this section after September 30, 1988.

[(f)(1) The Administrator shall monitor the performance of each contract facility furnishing care and services under the program carried out under subsection (a) of this section.

[(2) The Administrator shall use the results of such monitoring to determine—

[(A) with respect to the program, the medical advantages and cost-effectiveness that result from furnishing such care and services; and

[(B) with respect to such contract facilities generally, the level of success under the program, considering—

[(i) the rate of successful rehabilitation for veterans furnished care and services under the program;

[(ii) the rate of readmission to contract facilities under the program or the Veterans' Administration health-care facilities by such veterans for care or services for disabilities referred to in subsection (a) of this section;

[(iii) whether the care and services furnished under the program obviated the need of such veterans for hospitalization for such disabilities;

[(iv) the average duration of the care and services furnished such veterans under the program;

[(v) the ability of the program to aid in the transition of such veterans back into their communities; and

[(vi) any other factor that the Administrator considers appropriate.

[(3) The Administrator shall maintain records of—

[(A) the total cost for the care and services furnished by each contract facility under the program;

[(B) the average cost per veteran for the care and services furnished under the program; and

[(C) the appropriateness of such costs, by comparison to—

[(i) the average charges for the same types of care and services furnished generally by other comparable halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities; and

[(ii) the historical costs for such care and services for the period of time that the program carried out under subsection (a) of this section was a pilot program, taking into account economic inflation.

[(4) Not later than February 1, 1988, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the program carried out under this section during fiscal years 1984 through 1987. The report shall include—

[(A) a description of the care and services furnished;

[(B) the matters referred to in paragraph (1), (2), and (3) of this subsection; and

[(C) the Administrator's findings, assessment, and recommendations regarding the program under this section.]

[(g)] *(e)* The authority of the Administrator to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

§ 620B. Respite care

(a) * * *

* * * * * * *

(c) The authority provided by this section terminates on September 30, [1989.] *1990.*

* * * * * * *

SUBCHAPTER IV—HOSPITAL CARE AND MEDICAL TREATMENT FOR VETERANS IN THE REPUBLIC OF THE PHILIPPINES

* * * * * * *

§ 632. Contracts and grants to provide for the care and treatment of United States veterans by the Veterans Memorial Medical Center

(a) The President, with the concurrence of the Republic of the Philippines, may authorize the Administrator to enter into contracts with the Veterans Memorial Medical Center, with the approval of the appropriate department of the Government of the Republic of the Philippines, covering the period beginning on October 1, 1981, and ending on September 30, [1989,] *1990,* under which the United States—

(1) will provide for payments for hospital care and medical services (including nursing home care) in the Veterans Memorial Medical Center, as authorized by section 624 of this title and on the terms and conditions set forth in such section, to eligible United States veterans at a per diem rate to be jointly determined for each fiscal year by the two Governments to be fair and reasonable; and

(2) may provide that payments for such hospital care and medical services provided to eligible United States veterans may consist in whole or in part of available medicines, medical supplies, and equipment furnished by the Administrator to the Veterans Memorial Medical Center at valuations therefor as determined by the Administrator, who may furnish such medicines, medical supplies, and equipment through the revolving supply fund pursuant to section 5021 of this title.

(b)(1) To further assure the effective care and treatment of United States veterans in the Veterans Memorial Medical Center, there is authorized to be appropriated for each fiscal year during the period beginning on October 1, 1981, and ending on September 30, [1989,] *1990,* the sum of $500,000 to be used by the Administrator for making grants to the Veterans Memorial Medical Center for the purpose of assisting the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of such center.

* * * * * * *

CHAPTER 19—INSURANCE

SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

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703. Amount of insurance.
704. Plans of insurance.
705. Renewal.
706. Policy provisions.
707. Payment or use of dividends.
708. Premium payments.
709. Effective date of insurance.
710. Incontestability.
711. Forfeiture.
712. Total disability waiver.
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715. Total disability income provision.
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SUBCHAPTER II—UNITED STATES GOVERNMENT LIFE INSURANCE

740. Definition.
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742. Plans of insurance.
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759. Waiver of disability for reinstatement.
760. Waiver of premium payments on due date.
761. Authority for higher interest rates for amounts payable to beneficiaries.
762. Authority for higher monthly installments payable to certain annuitants.
763. Authority for payment of interest on settlements.

* * * * * * *

SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

* * * * * * *

§ 728. Authority for payment of interest on settlements

(a) Subject to subsection (b) of this section, the Administrator, under regulations which the Administrator shall prescribe, may pay interest on the proceeds of a participating National Service Life Insurance, Veterans' Special Insurance, and Veterans Reopened Insurance policy from the date the policy matures to the date of payment of the proceeds to the beneficiary or, in the case of an endowment policy, to the policyholder.

(b)(1) The Administrator may pay interest under subsection (a) of this section only in accordance with a determination by the Administrator that the payment of such interest is administratively and actuarially sound for the settlement option involved.

(2) Interest paid under subsection (a) of this section shall be at the rate that is established by the Administrator for dividends held on credit or deposit in policyholders' accounts under the insurance program involved.

§ 729. Authority to adjust premium discount rates

(a) Notwithstanding sections 702, 723, and 725 of this title and subject to subsection (b) of this section, the Administrator may from time to time adjust the discount rates for premiums paid in advance on National Service Life Insurance, Veterans' Special Life Insurance, and Veterans Reopened Insurance.

(b)(1) In adjusting a discount rate pursuant to subsection (a) of this section, the Administrator may not set such rate at a rate lower than the rate authorized for the program of insurance involved under section 702, 723, or 725.

(2) The Administrator may make an adjustment under subsection (a) of this section only in accordance with a determination by the Administrator that the adjustment is administratively and actuarially sound for the program of insurance involved.

SUBCHAPTER II—UNITED STATES GOVERNMENT LIFE INSURANCE

* * * * * * *

§ 763. Authority for payment of interest on settlements

(a) Subject to subsection (b) of this section, the Administrator, under regulations which the Administrator shall prescribe, may pay interest on the proceeds of a United States Government Life Insurance policy from the date the policy matures to the date of payment of the proceeds to the beneficiary or, in the case of an endowment policy, to the policyholder.

(b)(1) The Administrator may pay interest under subsection (a) of this section only in accordance with a determination by the Administrator that the payment of such interest is administratively and actuarially sound for the settlement option involved.

(2) Interest paid under subsection (a) shall be at the rate that is established by the Administrator for dividends held on credit or deposit in policyholders' accounts.

* * * * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

* * * * * * *

§ 1008. Aid to States for establishment, expansion, and improvement of veterans' cemeteries

(a)(1) * * *

* * * * * * *

(2) There is authorized to be appropriated $5,000,000 for fiscal year 1980 and for each of the four succeeding fiscal years, and such sums as may be necessary for fiscal year 1985 and for each of the [four] *nine* succeeding fiscal years, for the purpose of making grants under paragraph (1) of this subsection.

* * * * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * * * *

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

1411. Basic educational assistance entitlement for service on active duty.
1412. Basic educational assistance entitlement for service in the Selected Reserve.
1413. Duration of basic educational assistance.
1414. Payment of basic educational assistance.
1415. Amount of basic educational assistance.
1416. Inservice enrollment in a program of education.
1417. Limited entitlement for certain veterans.
1418. Opportunity for certain active-duty personnel to withdraw election not to enroll.
1419. Tutorial assistance.

* * * * * * *

SUBCHAPTER I—PURPOSES: DEFINITIONS

* * * * * * *

§ 1402. Definitions

For the purposes of this chapter—

(1) * * *

* * * * * * *

(3) The term "program of education"—

(A) has the meaning given such term in section 1652(b) of this title, and

(B) includes *(i)* a full time program of apprenticeship or of other on-job training approved as provided in clause (1) or (2), as appropriate, of section 1787(a) of this [title.] *title, and (ii) in the case of an individual who is not serving on active duty, a cooperative program (as defined in section 1682(a)(2) of this title).*

* * * * * * *

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

§ 1411. Basic educational assistance entitlement for service on active duty

(a) * * *

* * * * * * *

(1) * * *

* * * * * * *

[(2) who, before completion of the service described in clause (1) of this subsection, has received a secondary school diploma (or an equivalency certificate); and]

(2) who received a secondary school diploma (or the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary) before (A) in the case of an individual to whom clause (1)(A) of this subsection applies, completing the service described in such clause, or (B) in the case of an individual to whom clause (1)(B) of this subsection

applies, pursuing a program of education with educational assistance under this chapter; and

* * * * * * *

§ 1412. Basic educational assistance entitlement for service in the Selected Reserve

(a) * * *

* * * * * * *

(1) * * *

* * * * * * *

[(2) who, before completion of the service described in clause (1) of this subsection, has received a secondary school diploma (or an equivalency certificate); and]

(2) who received a secondary school diploma (or the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary) before (A) in the case of an individual to whom clause (1)(A) of this subsection applies, completing the service described in such clause, or (B) in the case of an individual to whom clause (1)(B) of this subsection applies, pursuing a program of education with educational assistance under this chapter; and

* * * * * * *

(b)(1) The requirement of four years of service under clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section is not applicable to an individual who is discharged or released from service in the Selected Reserve [for a service-connected disabilty, for hardship, or (in the case of an individual discharged or released after three and one-half years of such service) for the convenience of the Government.] *(A) for a service-connected disability, (B) for hardship, or (C) in the case of an individual discharged or released after completing three and one-half years of such service, for the convenience of the Government.*

* * * * * * *

(e)(1) An individual described in subsection (b)(1)(A) of this section may elect entitlement to basic educational assistance under section 1411 of this title, based on an initial obligated period of active duty of two years, in lieu of entitlement to assistance under this section.

(2) An individual who makes the election described in paragraph (1) of this subsection shall, for all purposes of this chapter, be considered entitled to educational assistance solely under section 1411 of this title. Such an election is irrevocable.

§ 1413. Duration of basic educational assistance

(a)(1) * * *

* * * * * * *

(c)(1) Subject to section 1795 of this title and except as provided in paragraph (2) of this subsection, each individual entitled to basic educational assistance under section 1418 of this title is entitled to 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance).

(2) An individual described in section 1418(b)(3)(B) of this title is entitled to one month of educational assistance for each month of active duty served by the individual after the date of the beginning of the period for which the individual's basic pay is reduced under section 1418(c) of this title.

[(c)**]***(d)* No individual may receive basic educational assistance benefits under this chapter for a period in excess of 36 months (or the equivalent thereof in part-time educational assistance).

* * * * * * *

§1416. Inservice enrollment in a program of education

(a) * * *

* * * * * * *

(c) A member of the Armed Forces who—

(1) completes at least two years of service on active duty after June 30, 1985, including the first 12 months of the additional period of active duty described in section 1418(b)(2) of this title.

(2) after such service continues on active duty without a break in service; and

(3) but for section 1418(b)(3)(A) of this title would be entitled to basic educational assistance under this chapter,

may receive such assistance for enrollment in an approved program of education while continuing to perform the service described in such section 1418(b)(3)(i).

§ 1417. Limited entitlement for certain veterans

(a) A veteran described in subsection (b) of this section is entitled to one month of basic educational assistance under this chapter (or the equivalent thereof in part-time educational assistance) for each full month of active duty served by such individual after the date of the beginning of the period for which the individual's basic pay is reduced under section 1411(b), 1412(c), or 1418(c) of this title.

(b) A veteran described in this subsection is a veteran—

(1) who is not otherwise entitled to basic educational assistance under this chapter;

(2) whose basic pay was reduced in accordance with section 1411(b), 1412(c), or 1418(c) of this title;

(3) who, before completion of the service described in section 1411(a)(1)(A), 1412(a)(1)(A), or 1418(b(3) of this title, as applicable—

(A) was discharged or released from service on active duty or in the Selected Reserve for a medical condition which preexisted such service and which the Administrator determines is not service connected, or

(B) was involuntarily discharged or released from such service for the convenience of the Government as a result of a reduction in force; and

(4) who, but for being discharged or released before completing such service, would have been entitled to basic eductional assistance under this chapter.

§ 1418. Opportunity for certain active-duty personnel to withdraw election not to enroll

(a) Notwithstanding any other provision of this chapter, during the 120-day period during fiscal year 1989 selected by the Secretary of Defense (hereinafter referred to as the "open period"), individuals who entered on active duty during the period beginning July 1, 1985, and ending June 30, 1988, and are serving on active duty during the open period shall have the opportunity in accordance with this section to withdraw an election under section 1411(b) or 1412(c) of this title not to become entitled to educational assistance under this chapter.

(b) An individual described in section 1411(a)(1)(A) or section 1412(a)(1)(A) of this title who made an election under section 1411(b) or 1412(c) and who—

(1) while serving on active duty during the open period, makes a withdrawal of such election;

(2) at the time of such withdrawal of election accepts an obligation to serve on active duty for a period of at least two years in addition to any period of active duty which, at the beginning of the open period, such individual was obligated to serve; and

(3)(A) serves such additional period of obligated active-duty service; or

(B) after beginning to serve, but before completing, such additional period is discharged or released from active duty for a service-connected disability or for hardship;

(C) is discharged or released for the convenience of the Government after completing not less than 20 months of such additional period; and

(4) before completion of the service described in clause (3) of this subsection, has received a secondary school diploma (or an equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary); and

(5) after completion of such service—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

(c) The basic pay of an individual withdrawing under subsection (b)(1) of this section an election under section 1411(b) or 1412(c) of this title shall, for each of the first 12 months of the period of active duty for which the individual becomes obligated to serve as described in subsection (b)(2) of this section be reduced by $100.

§ 1419. Tutorial assistance

(a) An individual entitled to an educational assistance allowance under this chapter shall also be entitled to the benefits provided an eligible veteran under section 1692 of this title.

(b) The individual's period of entitlement under this chapter shall be charged with one-half month for each $300 of such benefits received.

SUBHAPTER III—SUPPLEMENTAL EDUCATIONAL ASSISTANCE

§1421. Supplemental educational assistance for additional service

(a) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary, may provide for the payment of supplemental educational assistance under this subchapter to an individual eligible for basic educational assistance under section 1411 *or 1418* of this title who—

(1) serves five or more consecutive years of active duty in the Armed Forces after the years of active duty counted under *or* section **[**1411(a)(1)**]** *1418(b)(3)* of this title without a break in such service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty without a break in service; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

* * * * * * *

SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

§1431. Time limitation for use of eligibility and entitlement

(a) * * *

* * * * * * *

(d)*(1)* In the case of an individual eligible for educational assistance under this chapter—

[(1)**]** *(A)* who was prevented from pursuing such individual's chosen program of education before the expiration of the 10-year period for use of entitlement under this chapter otherwise applicable under this section because of a physical or mental disability which was not the result of the individual's own willful **[**misconduct,**]** *misconduct or because of a condition (and under the circumstances) described in paragraph (2) of this subsection,* and

[(2)**]** *(B)* who applies for an extension of such 10-year period within one year after **[**(A)**]** *(i)* the last day of such period, or **[**(B)**]** *(ii)* the last day on which such individual was so prevented from pursuing such program, whichever is later, such 10-year period shall not run with respect to such individual during the period of time that such individual was so prevented from pursuing such program and such 10-year period will again begin running on the first day following such individual's recovery from such disability on which it is reasonably feasible, as determined under regulations which the Administrator shall prescribe, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(2)(A) A condition referred to in paragraph (1)(A) of this subsection is an alcohol or drug dependence or abuse condition of an eligible individual in a case in which it is determined, under regulatins which the Administrator shall prescribe that—

(i) such individual has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (1)(B) of this subsection, an eligible individual's application for an extension of the 10-year period for use of entitlement under this chapter because of such a condition may be granted if such individual files an application for the extension not later than one year after whichever of the following last occurs:

(I) The last date of the declining period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) The period of time during which, based on the existence of such a condition, such 10-year period does not run shall not exceed the lesser of—

(I) the period during which the eligible individual was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such individual demonstrates to the satisfaction of the Administrator, that such individual was prevented by the condition from initiating or completing such program of education, or

(II) four years.

(iii) When such an extension is granted, the 10-year period with respect to the individual will again begin running on whichever of the following first occurs—

(I) the first day, following the condition becoming sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

(II) the day after the fourth year of the extension.

* * * * * * *

§ 1432. Limitations on educational assistance for certain individuals

(a) * * *

* * * * * * *

(d)(1) The amount of the monthly basic educational assistance allowance payable to an individual pursuing a cooperative program under this chapter shall be 80 percent of the monthly allowance otherwise payable to such individual under section 1415 of this title.

(2) For each month that an individual is paid a monthly educational assistance allowance for pursuit of a cooperative program under this chapter, the individual's entitlement under this chapter shall be charged at a rate of 80 percent of a month.

* * * * * * *

§ 1434. Program administration

(a)*(1)* Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), 1683, and 1685 of this title and the provisions of subchapters I and II of chapter 36 of this title (with the exception of sections 1780(c), 1780(g), and 1787) shall be applicable to the provision of educational assistance under this chapter.

(2) The term "eligible veteran", as used in [those provisions,] *the provisions of the sections enumerated in paragraph (1) of this subsection,* shall be deemed to include an individual who is eligible for educational assistance under this chapter.

(3)(A) The Administrator may, without regard to the application to this chapter of so much of the provisions of section 1671 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is "already qualified", and pursuant to such regulations as the Administrator shall prescribe, approve the enrollment of such individual in a deficiency, remedial, or refresher course of courses offered by an appropriate educational institution and required for, or preparatory to, the pursuit of an approved program of education.

(B) Educational assistance under this chapter shall be provided without charge to entitlement for the first five months of full-time pursuit of a program consisting of such course or courses.

* * * * * * *

CHAPTER 31—TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

* * * * * * *

§ 1503. Periods of eligibility

(a) * * *

* * * * * * *

(b)(1)*(A)* In any case in which the Administrator determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a medical condition *(other than a condition described in subparagraph (B)(ii) of this paragraph)* of such veteran made it infeasible for such veteran to participate in such a program, the 12-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program, and such period of eligibility shall again begin to run on the first day following such veteran's recovery from such condition on which it is reasonably feasible, as determined under regulations which the Administrator shall prescribe, for such veteran to participate in such a program.

(B)(i) Subject to clauses (iii) and (iv) of this subparagraph, in any case in which the Administrator determines, under regulations which the Administrator shall prescribe, that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a condition described in clause (ii) of this subparagraph made it infeasible for the veteran to participate in such a program, the twelve-year period of eligibility shall not run during the period of time that the veteran was so prevented from participating in such a program.

(ii) A condition referred to in clause (i) of this subparagraph is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(I) the veteran has received recognized treatment or has participated in a program of rehabilitation for the condition, and

(II) the condition is sufficiently under control to enable the veteran to participate in a vocational rehabilitation program under this chapter.

(iii) Clause (i) of this subparagraph applies only if the veteran has filed an application under this paragraph not later than one year after whichever of the following last occurs:

(I) The last date of the period of eligibility otherwise applicable under this section.

(II) The termination of that last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to clause (i) of this subparagraph are published in the Federal Register.

(iv) The period of time during which, pursuant to clause (i) of this subparagraph, the twelve-year period of eligibility does not run shall not exceed the lesser of—

(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for a condition described in clause (ii) of this subparagraph plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by such condition from participating in a vocational rehabilitation program under this chapter, or

(II) four years.

(v) When pursuant to clause (i) of this subparagraph a period of eligibility does not run for a period of time, such period of eligibility shall again begin to run on whichever of the following first occurs—

(I) The first day, following such condition becoming sufficiently under control to enable the veteran to participate in

such program of vocational rehabilitation, on which it is reasonably feasible, in accordance with under the regulations prescribed pursuant to clause (i) of this subparagraph, for the veteran to participate in such a program.

(II) The period of time during which that 12-year period of eligibility has, pursuant to such clause, been stopped from running equals four years.

* * * * * * *

§ 1515. Rehabilitation resources

(a) Notwithstanding any other provision of law, for the purpose of providing services under this chapter, the Administrator may—

(1) use the facilities of any Federal agency (including the Veterans' [Administration)] *Administration), or of any State or local government agency in receiving Federal financial assistance,* to provide training or work experience as part or all of a veterans' vocational rehabilitation program without pay or for nominal pay in any case in which the Administrator determines that such training, or work experience is necessary to accomplish such veteran's rehabilitation;

(2) use the facilities, staff, and other resources of the Veterans' Administration;

(3) employ such additional personnel and experts as the Administrator considers necessary; and

(4) use the facilities and services of any Federal, State, or other public agency, any agency maintained by joint Federal and State contributions, any public or private institutions or establishment, and any private individual.

(b)(1) While pursuing on-job training or work experience under subsection (a)(1) of this [section,] *section at a Federal agency,* a veteran shall be considered to be an employee of the United States for the purposes of the benefits of chapter 81 of title 5, but not for the purposes of laws administered by the Office of Personnel Management.

(2) Except as provided in chapter 17 of this title, hospital care and medical services provided under this chapter shall be furnished in facilities over which the Administrator has direct jurisdiction.

(3) Use *of the facilities of a State or local government agency under subsection (a)(1) of this section or use* of facilities and services under [clause (4) of] subsection (a)*(4)* of this section, shall be procured through contract, agreement, or other cooperative arrangement.

(4) The Administrator shall prescribe regulations providing for the monitoring of training and work experiences provided under such subsection (a)(1) at State or local government agencies and otherwise ensuring that such training or work experience is in the best interest of the veteran and the Federal Government.

* * * * * * *

§1517. Employment assistance

(a)(1) * * *

* * * * * * *

(2) Assistance provided under this subsection may include—

(A) direct placement of such veteran in employment;

(B) utilization of the services of disabled veterans outreach program specialists under section 2003A of this title; and

(C) utilization of the job development and placement services of (i) programs under the Rehabilitation Act of 1973, (ii) the State employment service and the Veterans' Employment Service of the Department of Labor, (iii) the Office of Personnel Management, [and] (iv) any other public or nonprofit organization having placement services [available.] *available, and (v) any for-profit entity in a case in which the Administrator has determined that services necessary to provide such assistance are available from such entity and that comparably effective services are not available, or cannot be obtained cost-effectively, from the entities described in subclauses (i) through (iv) of this clause.*

* * * * * * *

§1520. Program of independent living services and assistance

(a)(1) During fiscal years 1982 through 1989, the Administrator may, under contracts with [public or nonprofit private agencies or organizations,] *entities described in paragraph (7) of this subsection,* or through facilities of the Department of Medicine and Surgery, which possess a demonstrated capability to conduct programs of independent living services for severely handicapped persons, provide, under regulations which the Administrator shall prescribe, programs of independent living services and assistance under this chapter, in various geographic regions of the United States, to veterans described in paragraph (2) of this subsection.

* * * * * * *

(7) Entities described in this paragraph are (A) public or nonprofit agencies or organizations, and (B) for-profit entities in cases in which the Administrator determines that services comparable in effectiveness to services available from such an entity are not available, or cannot be obtained cost-effectively from, public or nonprofit agencies or through facilities of the Department of Medicine and Surgery.

* * * * * * *

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER III—ENTITLEMENT, DURATION

1631. Entitlement; loan eligibility.
1632. Duration; limitations.
1633. Apprenticeship or other on-job training.
1634. Tutorial Assistance.

* * * * * * *

SUBCHAPTER I—PURPOSE; DEFINITIONS

* * * * * * *

§ 1602. Definitions

For the purposes of this chapter—

(1)(A) * * *

* * * * * * *

(2) The terms "program of education"—

(A) has the meaning given such term in section 1652(b) of this title, and

(B) includes (*i*) a full-time program of apprenticeship or other on-job training approved as provided in clause (1) or (2), as appropriate, of section 1787(a) of this [title.] *title, and (ii) in the case of an individual who is not serving on active duty, a cooperative program (as defined in section 1682(a)(2) of this title).*

* * * * * * *

SUBCHAPTER III—ENTITLEMENT; DURATION

§ 1631. Entitlement; loan eligibility

(a)(1) * * *

* * * * * * *

(d)(1) The amount of the monthly benefit payment to an individual pursuing a cooperative program under this chapter shall be 80 percent of the monthly benefit otherwise payable to such individual (computed on the basis of the formula provided in subsection (a)(2) of this section).

(2) For each month that an indivdual is paid a monthly benefit payment for pursuit of a cooperative program under this chapter, the individual's entitlement under this chapter shall be charged at the rate 80 percent of a month.

(e)(1) Subject to the provisions of paragraph (2) of this subsection, the amount of the educational assistance benefits paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal State, or local penal institution for conviction of a felony may not exceed the lesser of (A) such amount as the Administrator determines, in accordance with regulations which the Administrator shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and the cost of necessary supplies, books, and equipment, or (B) the applicable monthly benefit payment otherwise prescribed in this section or section 1633 of this title. The amount of the educational assistance benefits payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veteran for any course are paid under any Federal program (other than a program administered by the Administrator) or under any State or local program.

(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

§ 1632. Duration; limitations

(a)(1) * * *

* * * * * * *

(2)(A) If any eligible veteran was prevented from initiating or completing such veteran's chosen program of education during the delimiting period determined under paragraph (1) of this subsection because of a physical or mental disability which was not the result of such veteran's own willful misconduct, *or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section,* such veteran shall, upon application made in accordance with subparagraph (B) of this paragraph, be granted an extension of the applicable delimiting period for such length of time *(except as provided in paragraph (4)(B) of this subsection)* as the Administrator determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education.

* * * * * * *

(3) When an extension of the applicable delimiting period is granted an eligible veteran under paragraph (2) of this [subsection,] *subsection because of such disability,* the delimiting period with respect to such veteran shall again begin to run on the first day after such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations prescribed by the Administrator, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible veteran in a case in which is is determined, under regulations which the Administrator shall prescribe, that—

(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for such extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

(II) four years.

(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

(I) The first day, following the condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(II) The day after the end of the fourth year of the extension.

* * * * * * *

§ 1634. Tutorial assistance

(a)(1) An individual entitled to benefits under this chapter shall also be entitled to the benefits provided an eligible veteran under section 1692 of this title.

(2) The individual's period of entitlement under this chapter shall be charged with one-half month for each $225 of such benefits received.

(b) Payments of benefits under this section shall be made out of funds available for payments under such section 1692.

* * * * * * *

SUBCHAPTER IV—ADMINISTRATION

§ 1641. Requirements

(a)*(1)* The provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1683, 1685, and 1691(a)(1) of this title and the provisions of chapter 36 of this title (with the exception of section 1787) shall be applicable with respect to individuals who are pursuing programs of education while serving on active duty.

(2)(A) The Administrator may, without regard to the application to this chapter of so much of the provisions of section 1671 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is "already qualified", and pursuant to such regulations as the Administrator shall prescribe, approve the enrollment of such individual in a deficiency, remedial, or refresher course or courses offered by an appropriate educational institution and required for, or preparatory to, the pursuit of an approved program of education.

(B) Educational assistance under this chapter for the first five months of full-time pursuit of a program consisting of such course or courses shall be provided without charge to entitlement and paid from the Veterans' Administration appropriation account for readjustment benefits.

(b) The provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1683, and 1691(a)[(1)] of this title and the provisions of chapter 36 of this title (with the exception of section 1787) shall be applicable with respect to individuals who are pursuing programs of education following discharge or release from active duty.

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CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

1681. Educational assistance allowance.
1682. Computation of educational assistance allowances.
[1682A. Accelerated payment of educational assistance allowances.]
1683. Approval of courses.
1684. Apprenticeship or other on-job training; correspondence courses.
1685. Veteran-student services.
[1686. Education loans.]
1687. [Repealed.]

SUBCHAPTER V—SPECIAL ASSISTANCE FOR THE EDUCATIONALLY DISADVANTAGED

1690. Purpose.
1691. Elementary and secondary education and preparatory educational assistance.
1692. [Special supplementary assistance.] *Tutorial assistance.*
1693. Effect on educational entitlement.

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SUBCHAPTER I—PURPOSE; DEFINITIONS

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§ 1652. Definitions

For the purposes of this chapter and chapter 36 of this title—

(a)(1) The term "eligible veteran" means any veteran who—

(A) served on active duty for a period of more than 180 days, any part of which occurred after January 31, 1955, and before January 1, 1977, and was discharged or released therefrom under conditions other than dishonorable; or

(B) contracted with the Armed Forces and was enlisted in or assigned to a reserve component prior to January 1, 1977, and as a result of such enlistment or assignment served on active duty for a period of more than 180 days, any part of which commenced within 12 months after January 1, 1977, and was discharged or released from such active duty under conditions other than dishonorable; or

(C) was discharged or released from active duty, any part of which was performed after January 31, 1955, and before January 1, 1977, or following entrance into active service from an enlistment provided for under clause (B) of this paragraph, because of a service-connected [disability.] *disability; or*

(D)(i) before January 1, 1977, commenced the third academic year as a cadet or midshipman at one of the service academies or the third academic year as a member of the Senior Reserve Officer Training Corps in a program of educational assistance under section 2104 or 2107 of title 10 if the individual (I) served on active duty for a period of more than 180 days pursuant to an appointment as a commissioned officer received upon graduation from one of the service academies or upon satisfactory completion of advanced training (as defined in section 2101 of title 10) as a member of the Senior Reserve Officers' Training Corps, respectively, (II) was discharged or released from such period of active duty under conditions other than dishonorable, and (III) enrolled in the educational assistance program under chapter 32 of this title, and (ii) before January 1, 1990, submits to the Administrator, in such form and manner as the Administrator may prescribe, an irrevocable election to be eligible after the date of such election for assistance under this chapter and, if enrolled under the chapter 32 program of educational assistance under this title at the time of such election, to be disenrolled from such program at that time.

(2) The requirement of discharge or release, prescribed in paragraph [(1)(A) or (B),] *(1)(A), (B), or (D),* shall be waived in the case of any individual who served more than one hundred and eighty days in an active duty status for so long as such individual continues on active duty without a break therein.

* * * * * * *

(4) For the purposes of this subsection, the term "service academies" means the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.

* * * * * * *

SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

* * * * * * *

§ 1662. Time limitations for completing a program of education

Delimiting Period for Completion

(a)(1) No educational assistance shall be afforded an eligible veteran under this chapter beyond the date 10 years after the veteran's last discharge or release from active duty after January 31, 1955; except that, in the case of any eligible veteran who was prevented from initiating or completing such veteran's chosen program of education within such time period because of a physical or mental disability which was not the result of such veteran's own willful [misconduct,] *misconduct or because of a condition (and under the circumstances) described in paragraph (4) of this subsection,* such veteran shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of such mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Administrator determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted a veteran under the preceding [sentence,] *sentence because of such disability,* the delimiting period with respect to such veteran will again begin running on the first day following such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Administrator shall prescribe, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

* * * * * * *

(4)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of eduction under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, a veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for the extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

(II) four years.

(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

(I) The first day, following such condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(II) The day after the end of the fourth year of the extension.

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

* * * * * * *

[§ 1682A. Accelerated payment of educational assistance allowances

[(a) The Administrator, in accordance with the provisions of this section and section 1798(f) of this title and regulations which the Administrator shall prescribe under such sections, shall accelerate the payment of educational assistance allowances (hereinafter in this section referred to as "accelerated payment") to an eligible veteran who makes application and is eligible therefor and proportionally reduce the educational entitlement of such veteran under section 1661 of this title.

[(b) An eligible veteran who makes application for accelerated payment shall be eligible for such payment on connection with each school term for which such veteran applies for such accelerated payment only if—

[(1) such veteran was enrolled as a full-time student during such school term:

[(2) such veteran was entitled to an educational assistance allowance under section 1661 during such school term;

[(3) such veteran has received, after the date of enactment of this section, a loan for such school term pursuant to section 1798 of this title;

[(4) the combined amount of tuition and fees of the educational institution in which such veteran was enrolled was in excess of $700 for such school term;

[(5) the educational institution in which such veteran was enrolled has certified to the Administrator that such veteran has satisfactory completed the program of education and attained the predetermined and identified educational, professional, or vocational objective which such veteran has been pursuing and has on such basis been awarded by such institution the appropriate educational degree, diploma, or certificate signifying such completion and attainment;

[(6) such application was filed with the Administrator within 180 days after the date (A) on which the degree, diploma, or certificate described in clause (5) of this subsection has been awarded to such veteran, or (B) on which the appropriate State or local governmental unit establishes a program described in clause (8) of this subsection, whichever date is the later;

[(7) the educational institution in which such veteran was enrolled has certified for such school term that 35 per centum or less (or such other per centum as the Administrator prescribes pursuant to section 1673(d) of this title) of the total number of students enrolled in such institution (computed separately for the main campus and any branch or extension of such institution pursuant to regulations prescribed by the Administrator under section 1673(d) of this title) were students receiving educational assistance benefits under this chapter 31, 32, 35, or 36 of this title; and

[(8) the State (or local governmental unit with jurisdication over the geographical area, or both such State and such unit) in which is located the educational institution in which such veteran was enrolled pays to the Veterans' Administration (for deposit in the Veterans' Administration Education Loan Fund established by section 1799 of this title) on such veteran's behalf an amount not more than the amount of accelerated payment which the Administrator is authorized to make on behalf of such veteran under this section, pursuant to a program established, before November 24, 1982, by such State (or unit or both) to match the maximum or a lesser amount of the accelerated payment which the Administrator is authorized to make to any eligible veteran under this section, except that such State (or unit) may limit such program to veterans who are bona fide residents of such State (or unit).

[(c) Accelerated payments made under this section by the Administrator and matching amounts paid to the Administrator by a State or local governmental unit, as described in subsection (b)(8) of this section, shall constitute a collection of principal on loans made under subchapter III of chapter 36 of this title and shall be deposited in the Veterans' Administration Education Loan Fund established by section 1799 of this title. The Administrator shall promptly notify each veteran on whose behalf such a principal collection and deposit has been made of the amount by which such collection and deposit reduces the principal repayment obligation of such veteran.

[(d) In no event may the amount of accelerated payment made by the Administrator in connection with any school term exceed (1) an amount equal to the educational assistance allowance to which such veteran was otherwise entitled under section 1682 of this title for such school term, (2) an amount equal to 33⅓ per centum of the amount by which the expenses of tuition and fees are in excess of $700 for such school term, (3) an amount equal to 33⅓ per centum of the amount by which the amount of the outstanding obligation of such veteran under any loan made pursuant to section 1798 of this title is in excess of $700, or (4) the amount which the State (or local governmental unit or both) concerned pays to the Administrator to match the accelerated payment to be made by the Administrator on behalf of such veteran, whichever is the least amount.

[(e) As used in this section, the term "school term" means—

[(1) in the case of an institution of higher learning operating on a quarter system, three such consecutive quarters;

[(2) in the case of an institution of higher learning operating on a semester system, two such consecutive semesters; or

[(3) in the case of an educational institution not an institution of higher learning, or, in the case of an institution of higher learning not operating on a quarter or semester system, any time division, approved by the Administrator, of a program of education within which segments of the program are completed.]

* * * * * * *

[§ 1686. Education loans

[Any eligible veteran to whom section 1662(a)(2) of this title is applicable shall be entited to an education loan (if the program of education is pursued in a State) in such amount and on such terms and conditions as provided in sections 1798 and 1799 of this title.]

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SUBCHAPTER V—SPECIAL ASSISTANCE FOR THE EDUCATIONALLY DISADVANTAGED

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§ 1692. [Special supplementary assistance] *Tutorial assistance*

(a) * * *

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(b) The Administrator shall pay to an eligible veteran receiving tutorial assistance pursuant to subsection (a) of this section, in addition to the educational assistance allowance provided in section 1682 of this title, the cost of such tutorial assistance in an amount not to exceed [$84] *$100* per month, for a maximum of twelve months, or until a maximum of [$1,008] *$1,200* is utilized, upon certification by the educational institution that—

(1) the individualized tutorial assistance is essential to correct a deficiency of the eligible veteran in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(2) the tutor chosen to perform such assistance is qualified and is not the eligible veteran's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(3) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

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CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

1731. Educational assistance allowance.
1732. Computation of educational assistance allowance.
1733. Special assistance for the educationally disadvantaged.
1734. Apprenticeship or other on-job training; correspondence courses.
1735. Approval of courses.
1736. Specialized vocational training courses.
[1737. Education loans.
[1738. Accelerated payment of educational assistance allowances.]

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SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

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§ 1712. Periods of eligibility

(a) * * *

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(b)(1) * * *

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(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any eligible person (as defined in section 1701(a)(1)(B), (C), or (D) of this title) who was prevented from initiating or completing such person's chosen program of education within such period because of a physical or mental disability which was not the result of such person's own willful [misconduct,] *misconduct or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section,* such person shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time *(except as provided in paragraph (4)(B)(ii) of this subsection)* as the Administrator determines, from the evidence, that such person was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted under the exception in the preceding [sentence,] *sentence because of such disability,* the delimiting period will again begin running on the first day following such eligible person's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Administrator shall prescribe, for such eligible person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

* * * * * * *

(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition on an eligible person in a case in which it is determined, under regulations which the Administrator shall prescribe that—

(i) such person has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible person may be granted an extension of the applicable delimiting period because of such a condition if such person files an application for such extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

(I) the period during which the eligible person was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such person demonstrates, to the satisfaction of the Administrator, that such person was prevented by the condition from initiating or completing such program of education.

(II) four years.

(iii) When such an extension is granted, the delimiting period with respect to such person will again begin running on whichever of the following first occurs—

(I) The first day, following the condition becoming sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(II) The day after the end of the fourth year of the extension.

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

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§ 1733. Special assistance for the educationally disadvantaged

[(a) Any eligible spouse or surviving spouse shall, without charge to any entitlement such spouse may have under section 1711 of this title, be entitled to the benefits provided an eligible veteran (with no dependents) under section 1691 (if pursued in a State) of this title.]

(a)(1) The Administrator may approve the enrollment of any eligible person under this chapter in any appropriate course or courses as may be approved for an eligible veteran under section 1691(a) (if pursued in a State) of this title.

(2) Educational assistance under this chapter for the first five months of full-time pursuit of a program consisting of such course or courses shall be provided without charge to entitlement.

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[§ 1737. Education loans

[Any eligible persons shall be entitled, before October 1, 1981, to an education loan (if the program of education is pursued in a State) in such amount and on such terms and conditions as provided in sections 1798 and 1799 of this title.

[§1738. Accelerated payment of educational assistance allowances

[An eligible person shall be entitled to an accelerated payment of educational assistance allowances pursuant to the provisions of section 1682A of this title.]

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CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

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SUBCHAPTER II—MISCELLANEOUS PROVISIONS

1781. Limitations on educational assistance.
1782. Control by agencies of the United States.
1783. Conflicting interests.
1784. Reports by veterans, eligible persons, and institutions; reporting fee.
1785. Overpayments to eligible persons or veterans.
1786. Correspondence courses.
1787. Apprenticeship or other on-job training.
1788. Measurement of courses.
1789. Period of operation for approval.
1790. Overcharges by educational institutions: discontinuance of allowances: examination of records; false or misleading statements.
1791. Change of program.
1792. Advisory committee.
1793. Compliance surveys.
1794. Use of other Federal agencies.
1795. Limitation on period of assistance under two or more programs.
1796. Limitation on certain advertising, sales, and enrollment practices.
1797. Funding of contract educational and vocational counseling.

SUBCHAPTER III—EDUCATION LOANS [TO ELIGIBLE VETERANS AND ELIGIBLE PERSONS]

1798. Eligibility for loans; amount and conditions of loans; interest rate on loans.
1799. Revolving fund; insurance.

SUBCHAPTER I—STATE APPROVING AGENCIES

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§1780. Payment of educational assistance or subsistence allowances

Period for Which Payment May be Made

(a) Payment of educational assistance or subsistence allowances to eligible veterans or eligible persons pursuing a program of education or training, other than a program by correspondence, in an educational institution under chapter 31, 34, or 35 of this title shall be paid as provided in this section and, as applicable, in section 1508, 1682, 1691, or 1732 of this title. Such payments shall be paid only for the period of such veterans' or persons' enrollment in, and pursuit of, such program, but no amount shall be paid—

(1) to any eligible veteran or eligible person enrolled in a course which leads to a standard college degree, or a course that meets the requirements of section 1788(a)(7) of this title, for any period when such veteran or person is not pursuing such veteran's or person's course in accordance with the regularly established policies and regulations of the educational in-

stitution, with the provisions of such regulations as may be prescribed by the Administrator pursuant to subsection (g) of this section, and with the requirements of this chapter or of chapter 34 of 35 of this title, but payment may be made for an actual period of pursuit of one or more unit subjects pursued for a period of time shorter than the enrollment period at the educational institution;

(2) to any eligible veteran or eligible person enrolled in a course which does does not lead to a standard college degree (excluding courses that meet the requirements of section 1788(a)(7) of this title and programs of apprenticeship and programs of other on-job training authorized by section 1787 of this title) for any day of absence in excess of thirty days in a twelve-month period, not counting as absences weekends or legal holidays (or customary vacation periods connected therewith) established by Federal or State law (or in case of the Republic of the Philippines, Philippine law) during which the institution is not regularly in session and periods (not to exceed five days in any twelve-month period) when the institution is not in session because of teacher conferences or teacher training sessions;

(3) to any eligible veteran or person for auditing a course;

(4) to any eligible veteran or person for a course for which the grade assigned is not used in computing the requirements for graduation including a course from which the students withdraws unless the Administrator finds there are mitigating [circumstances;] *circumstances, except that, in the first instance of withdrawal by an eligible veteran or person from a course or courses with respect to which such veteran or person has been paid assistance under this title, mitigating circumstances shall be considered to exist with respect to courses totalling not more than six semester hours or the equivalent thereof;* or

(5) to any eligible veteran or person for pursuit of a program of education exclusively by correspondence as authorized under section 1786 of this title or for the pursuit of a correspondence portion of a combination correspondence-residence course leading to a vocational objective where the normal period of time required to complete such correspondence course or portion is less than 6 months. A certification as to the normal period of time required to complete the course must be made to the Administrator by the educational institution.

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SUBCHAPTER II—MISCELLANEOUS PROVISIONS

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§ 1788. Measurement of courses

(a) * * *

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[(e) For the purpose of determining whether a course—

[(1) which is offered by an institution of higher learning, and

[(2) for which such institution requires one or more unit courses or subjects for which credit is granted toward a standard college degree

will, during the semester (or quarter or other applicable portion of the academic year) when such unit course or subject is being pursued, be considered full time under clause (1) or (2) of subsection (a) of this section, each of the numbers of hours specified in such clause shall be deemed to be reduced, during such semester (or other portion of the academic year), by the percentage described in the following sentence and rounded as the Administrator may prescribe. Such percentage is the percentage that the number of semester hours (or the equivalent thereof) represented by such unit course or subject is of the number of semester hours (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a fulltime institutional undergraduate course at such institution.]

(e)(1) In order to determine the total clock hours of attendance or net of instruction under clause (1) or (2), respectively, of subsection (a) of this section for a course which is offered by an institution of higher learning and for which the institution requires one or more unit courses or subjects for which credit is granted toward a standard quarter- or semester-hour basis—

(i) the number of credit hours (semester or quarter hours) represented by such unit courses or subjects shall, with respect to the semester, quarter, or other applicable portion of the academic year during which such unit courses or subjects were pursued, be converted to equivalent clock hours, as determined pursuant to in paragraph (2) of this subsection; and

(ii) such equivalent clock hours shall be combined with the actual weekly clock hours, if any, of training concurrently pursued at such institution in the course not leading to a standard college degree.

(2) For the purpose of determining equivalent clock hours under paragraph (1) of this subsection, the total number of credit hours (semester or quarter hours) being pursued will be multiplied by the quotient of the number of clock hours which constitute full time under clause (1) or (2) of subsection (a) of this section, as appropriate, divided by the number of semester hours (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a full-time institutional undergraduate course at such institution.

* * * * * * *

§ 1792. Advisory committee

(a) There shall be a Veterans' Advisory Committee on Education formed by the Administrator which shall be composed of persons who are eminent in their respective fields of education, labor, and management and of representatives of institutions and establishments furnishing education to eligible veterans or persons enrolled under chapter 30, 32, 34, or 35 of this title. The committee shall also include veterans representative of World War II, the Korean conflict era, the post-Korean conflict era, the Vietnam era, and the post-Vietnam [era.] *era, and the chairman of the Commission to*

Assess Veterans' Education Policy established under section 320 of Public Law 99-576. The Assistant Secretary of Education for Postsecondary Education (or such other comparable official of the Department of Education as the Secretary of Education may designate) and the Assistant Secretary of Labor for Veterans' Employment shall be ex officio members of the advisory committee.

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(c) The committee shall remain in existence until December 31, [1989.] *1993.*

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§ 1797. Funding of contract educational and vocational counseling

(a) Subject to subsection (b) of this section, educational or counseling services obtained by the Veterans' Administration by contract and provided to an individual applying for or receiving benefits under section 524 or chapters 30, 32, 34, or 35 of this title or chapter 106 of title 10, shall be paid for out of the Veterans' Administration appropriations account for readjustment benefits.

(b) Payments from the appropriations account for readjustment benefits under this section shall not exceed $5 million in any fiscal year.

SUBCHAPTER III—EDUCATION LOANS [TO ELIGIBLE VETERANS AND ELIGIBLE PERSONS]

§1798. Eligibility for loans; amount and conditions of loans; interest rate on loans

(a)(1) Subject to paragraph (2) of this subsection, each eligible veteran [and eligible person] shall be entitled to a loan under this subchapter *(if the program of education is pursued in a State)* in an amount determined under, and subject to the conditions specified in, subsection (b)(1) of this section if the veteran [or person] satisfies the requirements set forth in subsection (c) of this section and the criteria established under subsection (g) of this section.

(2) Except in the case of a veteran to whom section 1662(a)(2) of this title is applicable, no loan may be made under this subchapter after September 30, 1981.

(b)(1) Subject to paragraph (3) of this subsection, the amount of the loan to which an eligible veteran [or eligible person] shall be entitled under this subchapter for any academic year shall be equal to the amount needed by such veteran [or person] to pursue a program of education at the institution at which the veteran [or person] is enrolled, as determined under paragraph (2) of this subsection.

(2)(A) The amount needed by a veteran [or person] to pursue a program of education at an institution for any academic year shall be determined by subtracting (i) the total amount of financial resources (as defined in subparagraph (B) of this paragraph) available to the veteran [or person] which may be reasonably expected to be expended by such veteran [or person] for educational purposes in any year from (ii) the actual cost of attendance (as defined in subparagraph (C) of this paragraph) at the institution in which such veteran [or person] is enrolled.

(B) The term "total amount of financial resources" of any veteran [or person] for any year means the total of the following:

(i) The annual adjusted effective income of the veteran [or person] less Federal income tax paid or payable by such veteran [or person] with respect to such income.

(ii) The amount of cash assets of the [veteran or person.] *veteran.*

(iii) The amount of financial assistance received by the veteran [or person] under the provisions of title IV of the Higher Education act of 1965 (20 U.S.C. 1070 et seq.).

(iv) Educational assistance received by the veteran [or person] under this title other than under this subchapter.

(v) Financial assistance received by the veteran [or person] under any scholarship or grant program other than those specified in clauses (iii) and (iv).

(C) The term "actual cost of attendance" means, subject to such regulations as the Administrator may provide, the actual per-student charges for tuition, fees, room and board (or expenses related to reasonable commuting), books, and an allowance for such other expenses as the Administrator determines by regulation to be reasonably related to attendance at the institution at which the veteran [or person] is enrolled.

(3) The aggregate of the amounts any veteran [or person] may borrow under this subchapter may not exceed $376 multiplied by the number of months such veteran [or person] is entitled to receive educational assistance under section 1661 [or subchapter II of chapter 35, respectively,] of this title, but not in excess of $2,500 in any one regular academic year.

(c) An eligible veteran [or person] shall be entitled to a loan under this subchapter if such veteran [or person]—

(1) is in attendance at an educational institution on at least a half-time basis and (A) is enrolled in a course leading to a standard college degree, or (B) is enrolled in a course, the completion of which requires six months or longer, leading to an identified and predetermined professional or vocational objective, except that the Administrator may waive the requirements of subclause (B) of this clause, in whole or in part, if the Administrator determines, pursuant to regulations which the Administrator shall prescribe, it to be in the itnerest of the eligible veteran and the Federal Government;

(2) enters into an agreement with the Administrator meeting the requirements of subsection (d) of this section; and

(3) satisfies any criteria established under subsection (g) of this section.

No loan shall be made under this subchapter to an eligible veteran [or person] pursuing a program of correspondence, or apprenticeship or other on-job training.

(d) Any agreement between the Administrator and a veteran [or person] under this subchapter—

(1) shall include a note or other written obligation which provides for repayment to the Administrator of the principal amount of, and payment of interest on, the loan in installments (A) over a period beginning nine months after the date on which the borrower ceases to be at least a half-time student

and ending ten years and nine months after such date, or (B) over such shorter period as the Administrator may have prescribed under subsection (g) of this section;

(2) shall include provision for acceleration of repayment of all or any part of the loan, without penalty, at the option of the borrower;

(3) shall provide that the loan shall bear interest, on the unpaid balance of the loan, at a rate prescribed by the Administrator, at the time the loan is contracted for which rate shall be comparable to the rate of interest charged students at such time on loans insured by the Secretary of Education under part B of title IV of the Higher Education Act of 1965, but in no event shall the rate so prescribed by the Administrator exceed the rate charged students on such insured loans, and shall provide that no interest shall accrue prior to the beginning date of repayment; and

(4) shall provide that the loan shall be made without security and without endorsement.

(e)(1) Except as provided in paragraph (2) of this subsection, whenever the Administrator determines that a default has occurred on any loan made under this subchapter, the Administrator shall declare an overpayment, and such overpayment shall be recovered from the veteran [or person] concerned in the same manner as any other debt due the United States.

(2) If a veteran [or person] who has received a loan under this section dies or becomes permanently and totally disabled, then the Administrator shall discharge the veteran's [or person's] liability on such loan by repaying the amount owed on such loan.

(3) The Administrator shall submit to the appropriate committees of the Congress not later than December 31 of each year a report on the current results of the continuing review required by subsection (g)(1) of this section to be made regarding the default experience with respect to loans made under this section and any steps being taken to reduce default rates on such loans. Such report shall include—

(A) data regarding the cumulative default experience, and the default experience during the preceding fiscal year, with respect to such loans; and

(B) data regarding the default experience and default rate with respect to [(i) loans made under this section in connection with accelerated payments under section 1682A of this title, and (ii) other] loans made under this section.

(f)[(1) At the time of application by any eligible veteran for a loan under this section, such veteran shall assign to the benefit of the Veterans' Administration (for deposit in the Veterans' Administration Education Loan Fund established under section 1799 of this title) the amount of any accelerated payment to which such eligible veteran may become entitled from the Administrator and any matching contribution by a State or local governmental unit pursuant to section 1682A(b)(8) of this title in connection with the school term for which such veteran has applied.]

[(2)] Payment of a loan made under this section shall be drawn in favor of the eligible veteran and mailed promptly to the educational institution in which such veteran is enrolled. Such institution shall deliver such payment to the eligible veteran as soon as practicable after receipt thereof. Upon delivery of such payment to the eligible veteran, such educational institution shall promptly submit to the Administrator a certification, on such form as the Administrator shall prescribe, of such delivery, and such delivery shall be deemed to be an advance payment under section 1780(d)(4) of this title for purposes of section 1784(b) of this title.

[(3) For purposes of this subsection, the term "eligible veteran" includes eligible person as such term is defined in section 1701(a)(1) of this title.]

(g)(1) The Administrator shall conduct, on a continuing basis, a review of the default experience with respect to loans made under this section.

(2)(A) To ensure that loans are made under this section on the basis of financial need directly related to the costs of education, the Administrator may, by regulation, establish (i) criteria for eligibility for such loans, in addition to the criteria and requirements prescribed by subsection (c) and (d) of this section, in order to limit eligibility for such loans to eligible veterans [and eligible persons] attending educational institutions with relatively high rates of tuition and fees, and (ii) criteria under which the Administrator may prescribe a repayment period for certain types of loans made under this section that is shorter than the repayment period otherwise applicable under subsection (d)(1)(A) of this section. Criteria established by the Administrator under clause (i) of the preceding sentence may include a minimum amount of tuition and fees that an eligible veteran [or eligible person] may pay in order to be eligible for such a loan (except that any such criterion shall not apply with respect to a loan for which the veteran is eligible as a result of an extension of the period of eligibility of such veteran for loans under this section provided for by section 1662(a)(2) of this title).

(B) In prescribing regulations under subparagraph (A) of this paragraph, the Administrator shall take into consideration information developed in the course of the review required by paragraph (1) of this subsection.

(C) Regulations may be prescribed under subparagraph (A) of this paragraph only after opportunity has been afforded for public comment thereon.

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

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SUBCHAPTER II—EFFECTIVE DATES

§ 3010. Effective dates of awards

(a) * * *

*   *   *   *   *   *   *

(i)*(1)* Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of reopening of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

(2) Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence in the form of official reports from the department of the Secretary concerned, the effective date of commencement of the benefits so awarded shall be the date on which an award of benefits under the disallowed claim would have been effective had the claim been allowed on the date it was disallowed.

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CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.
3101. Nonassignability and exempt status of benefits.
3102. Waiver of recovery of claims by the United States.
3103. Certain bars to benefits.
313A. Minimum active-duty service requirement.
3104. Prohibition against duplication of benefits.
3105. Waiver of retired pay.
3106. Renouncement of right to benefits.
3107. Apportionment of benefits.
3108. Withholding benefits of persons in territory of the enemy.
3109. Payment of certain withheld benefits.
3110. Payment of benefits for month of death.
3111. Prohibition of certain benefit payments.
3112. Annual adjustment of certain benefit rates.
3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony.
3114. Indebtedness offsets.
3115. Interest and administrative cost charges on delinquent payments of certain amounts due the United States.
3116. Authority to sue to collect certain debts.
3117. Protection of benefits applicants and recipients from improper use of certain information.

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§ 3102. Waiver of recovery of claims by the United States

(a) * * *

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(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Administrator may waive payment of an indebtedness to the Veterans' Administration by [the veteran (as defined in section 101 and 1801), or the veteran's] *any individual described in section 1802(a) of this title as being eligible for housing loan benefits under chapter 37 of this title, or such individual's* spouse, following default and loss of the property, where the Administrator determines that collection of such indebtedness would be against equity and good conscience.

§ 3117. Protection of benefit applicants and recipients from improper use of certain information.

(a)(1) In order to protect applicants for and recipients of the benefits and services described in paragraph (2) of this subsection from the improper use of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)(viii)), the Administrator may not terminate, deny, suspend, or reduce any such benefits or services of an individual until the Administrator has complied with the requirements in section 1137(c) of the Social Security Act (42 U.S.C. 1320b-7(c)), and such requirements shall be fully applicable in the case of such benefits and services.

(2) The benefits and services described in this paragraph are—

(A) needs-based pension benefits provided under chapter 15 of this title or any other law administered by the Veterans' Administration;

(B) parents' dependency and indemnity compensation provided under section 415 of this title;

(C) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of this title; and

(D) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total.

(b) In the case of compensation described in subsection (a)(2)(D) of this section, the Administrator may independently verify or otherwise act upon wage or self-employment data referred to in subsection (a) of this section only if the Administrator finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.

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CHAPTER 59—AGENTS AND ATTORNEYS

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§ 3404. Recognition of agents and attorneys generally

(a) * * *

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(c)*(1)* The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees—

[(1)]*(A)* shall be determined and paid as prescribed by the Administrator;

[(2)]*(B)* shall not exceed $10 with respect to any one claim; and

[(3)]*(C)* shall be deducted from monetary benefits claimed and allowed.

(2) The provisions of this subsection shall apply only to cases involving claims for benefits under the laws administered by the Veterans' Administration, and such provisions shall not apply in cases in which the Veterans' Administration is the plaintiff or in which other attorneys' fees statutes apply.

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PART V—BOARDS AND DEPARTMENTS

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CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.
4001. Composition of Board of Veterans' Appeals.
4002. Assignment of members of Board.
4003. Determinations by the Board.
4004. Jurisdiction of the Board.
4005. Filing of notice of disagreement and appeal.
4005A. Simultaneously contested claims.
4006. Administrative appeals.
4007. Docketing of appeals.
4008. Rejection of applications.
4009. [Independent medical] *Medical* opinions.
4010. Adjudication procedures.
4011. Notices of procedures.

§ 4001. Composition on Board of Veterans' Appeals

(a) There shall be in the Veterans' Administration a Board of Veterans' Appeals (hereafter in this chapter referred to as the "Board") under the administrative control and supervision of a chairman [directly responsible to the Administrator.] *(hereinafter referred to as the "Chairman").* The Board shall consist of a Chairman, a Vice Chairman, such number (not more than 65) of members as may be found necessary, and such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings, and considering and disposing of appeals properly before the [Board.] *Board in a timely manner.*

[(b) Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the Approval of the President.]

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of five years. An individual may serve as Chairman for not more than three complete terms. The Chairman may be removed by the President for good cause.

(2)(A) The members of the Board (including the Vice Chairman) shall be appointed by the Chairman for a term of nine years. A member appointed to fill a vacancy resulting from the resignation, death, or removal of a member before the end of the term for which the original appointment was made shall serve for the remainder of the unexpired term. Members may be reappointed without limitation. The Chairman shall designate one member as Vice Chairman to perform such functions as the Chairman shall designate and to serve as the Acting Chairman during the absence or disability of the Chairman or in the event of a vacancy in the office of Chairman. Such member shall serve as Vice Chairman at the pleasure of the Chairman.

(B) A member of the Board may be removed only by the Chairman and only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Merit Systems Protection Board. Section 554(a)(2) of title 5 shall not apply to a removal action under the subparagraph. In such a removal action, a member shall have the rights set out in section 713(b) of such title.

* * * * * *

(d) The Chairman shall submit a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives, not later than December 31, 1988, and annually thereafter, on the experience of the Board during the prior fiscal year together with projections for the fiscal year in which the report is submitted and the subsequent fiscal year. Such report shall contain, as a minimum, information specifying the number of cases appealed to the Board during the prior fiscal year, the number of cases pending before the Board at the beginning and end of such fiscal year, the number of such cases which were filed during each of the 36 months preceding the then current fiscal year, the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the prior fiscal year, and the number of members of, and the professional, administrative, clerical, stenographic, and other personnel employed by, the Board at the end of the prior fiscal year. The projections for the current fiscal year and subsequent fiscal year shall include, for each such year, estimates of the number of cases to be appealed to the Board and an evaluation of the Board's ability, based on existing and projected personnel levels, to ensure timely disposition of such appeals as provided for by subsection (a) of this section.

(e) Notwithstanding any other provision of law, no member or temporary or acting member of the Board shall be eligible for or receive, directly or indirectly, bonuses (in addition to salary) relating to service on the Board.

* * * * * * *

§ 4003. Determinations by the Board

[(a) The determination of the section, when unanimously concurred in by the members of the section shall be the final determination of the Board, except that the Board on its own motion may correct an obvious error in the record, or may upon the basis of additional official information from the service department concerned reach a contrary conclusion.

[(b) When there is a disagreement among the members of the section the concurrence of the Chairman with the majority of members of such section shall constitute the final determination of the Board, except that the Board on its own motion may correct an obvious error in the record, or may upon the basis of additional official information from the service department concerned reach a contrary conclusion.]

(a)(1) A determination, when concurred in by the requisite number of members of a section, shall be the final decision of the Board.

(2) The requisite number of members of a section who must concur in a determination for it to constitute a final decision is—

(A) for an allowance of a claim, a majority of the members of the section; or

(B) for a denial of a claim, all members of the section.

(b) When there is a disagreement among the members of a section in any case in which unanimity is required for a final [illegible] the concurrence of the Chairman with the majority of the [illegible] of such section shall constitute the final decision of the Board. The Chairman may, instead of voting, expand the size of the section for determination of that case, and the concurrence of a majority of the members of the expanded section shall constitute the final decision of the Board.

(c) If, without the vote of a temporary member designated under section 4001(c)(1) of this title or the vote of an acting member designated under section 4002(a)(2)(A)(ii) of this title, a section would be evenly divided in the determination of any claim—

(1) such member shall not vote; and

(2) the Chairman shall expand, by not less than two members, the size of the section for determination of that claim.

(d) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record or may reach a contrary conclusion upon the basis of additional information from the department of the Secretary concerned after notice of such additional [illegible] is furnished to the claimant and the claimant is [illegible] opportunity to be heard in connection with such [illegible]

§ 4004. Jurisdiction of [illegible]

(a) All questions on claims [involving] *for* benefits under the laws administered by the Veterans' Administration shall be subject to one review on appeal to the Administrator. Final decisions on such appeals shall be made by the [Board] *Board after affording the claimant an opportunity for a hearing and shall be based exclusively on evidence and material of record in the proceeding, and upon consideration of all such evidence and material, and on applicable provisions of law.*

(b)*(1) Except as provided in paragraph (2) of this subsection,* [When] *when* a claim is disallowed by the Board, it may not thereafter be reopened and [allowed,] *allowed* and no claim based upon the same factual basis shall be [considered; however, where subsequent to disallowance of a claim, new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and review of the former decision.] *considered.*

(2) Following such a disallowance, the Board (directly or through the agency of original jurisdiction, as described in section 4005(b)(1) of this title)—

(A) when new and material evidence is presented or secured, shall authorize the reopening of a claim and a review of the Board's former decision; and

(B) for good cause shown, may authorize the reopening of a claim and a review of the Board's former decision.

* * * * * * *

[(d) The decisions of the Board shall be in writing and shall contain findings of fact and conclusions of law separately stated.]

(d) After reaching a decision in a case, the Board shall promptly mail notice of its decision to the claimant and the claimant's authorized representative, if any, at the last known address of the claimant and at the last known address of the claimant's authorized representative, if any. Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases therefor, on all material issues of fact and law and on matters of discretion presented on the record; and

(2) an order granting appropriate relief or denying relief.

§ 4005. Filing of notice of disagreement and appeal

(a) * * *

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(d)(1) * * *

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[(4) The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken.]

(4) The claimant may not be presumed to agree with any statement of fact or law contained in the statement of the case to which the claimant does not specifically express agreement.

(5) The Board of Veterans' Appeals [will base its decision on the entire record and] may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

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§ 4009. [Independent medical] *Medical opinions*

(a) * * *

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(c)(1) Whenever there exists in the evidence of record in a case being considered by the Board, a substantial disagreement between the substantiated findings or opinions of two physicians with respect to an issue material to the outcome of the case, the Board shall, upon the request of the claimant and after taking appropriate action to attempt to resolve the disagreement, arrange for an advisory medical opinion in accordance with the procedure prescribed in subsection (b) of this section. The claimant may appeal a denial of a request for such an opinion to the Chairman.

(2) If the Board or the Chairman upon appeal denies a request for an advisory medical opinion, the Board, or the Chairman after the appeal, shall prepare and provide to the claimant and the claimant's authorized representative, if any, a statement setting forth the basis for the denial and, in the case of a denial of such request by the Board, a notice of the claimant's right to appeal the denial to the Chairman.

(3) Actions of the Board under this subsection, including any such denial concurred in by the Chairman (if appealed), shall be final and conclusive, and no other official or any court of the United States shall have the power or jurisdiction to review any aspect of any such action by an action in the nature of mandamus or otherwise.

(d) If a member of the Board receives the medical opinion of any physician relating to any appeal under consideration by such member (other than a medical opinion of a physician on the section of the Board considering such appeal) or an employee of the Board in the consideration of such appeal receives such an opinion, the Board shall furnish such opinion to the claimant and shall afford the claimant 60 days in which to submit a response to such opinion before the Board issues a final decision on the appeal. The Board shall consider any such response and shall include in the final decision a discussion of such opinion, the response (if any), and the effect of such opinion and response on the Board's decision.

§ 4010. Adjudication procedures

(a) For purposes of conducting any hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, the Administrator and the members of the Board may administer oaths and affirmations, examine witnesses, and receive evidence.

(b) Any oral, documentary, or other evidence, even though inadmissible under the rules of evidence applicable to judicial proceedings, may be admitted in a hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, but the Administrator and the Chairman, under regulations which the Administrator and the Chairman shall jointly prescribe, may provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(c)(1) In the course of any proceeding before the Board, any party to such proceeding or such party's authorized representative shall be afforded the opportunities—

(A) to examine and, on payment of a fee prescribed pursuant to section 3302(b) of this title (not to exceed the direct cost of

duplication), obtain copies of the contents of the case files and all documents and records to be used by the Veteran's Administration at such proceeding;

(B) to present witnesses and evidence, subject only to such restrictions as may be set forth in regulations prescribed pursuant to subsection (b) of this section, as to materiality, relevance, and undue repetition;

(C) to make oral argument and submit written contentions, in the form of a brief or similar document, on substantive and procedural issues;

(D) to submit rebuttal evidence;

(E) to present medical opinions and request an independent advisory medical opinion pursuant to section 4009(c) of this title; and

(F) to serve written interrogatories on any person, including any employee of the Veteran's Administration, which interrogatories shall be answered separately and fully in writing and under oath unless written objection thereto, in whole or in part, is filed with the Chairman by the person to whom the interrogatories are directed or such person's representative.

(2) The fee provided for in paragraph (1)(A) of this subsection may be waived by the Chairman, pursuant to regulations which the Administrator shall prescribe, on the basis of the party's inability to pay or for other good cause shown.

(3) In the event of any objection filed under paragraph (1)(F) of this subsection, the Chairman shall, pursuant to regulations which the Chairman shall prescribe establishing standards consistent with standards for protective orders applicable in the United States District Courts, evaluate such objection and issue an order (A) directing that, within such period as the Chairman shall specify, the interrogatory or interrogatories objected to be answered as served or answered after modification, or (B) indicating that the interrogatory or interrogatories are no longer required to be answered.

(4) If any person upon whom interrogatories are served under paragraph (1)(F) of this subsection fails to answer or fails to provide responsive answers to all of the interrogatories within 30 days after service or such additional time as the Chairman may allow, the Chairman, upon determining that the party propounding such interrogatories has shown the general relevance and reasonableness of the scope of the interrogatories, shall issue a subpena under section 3311 of this title (with enforcement of such subpena to be available under section 3313 of this title) for such person's appearance and testimony on such interrogatories at a deposition on written questions, at a location within 100 miles of where such person resides, is employed, or transacts business.

(d)(1) A claimant may request a hearing before a traveling section of the Board. Cases shall be scheduled for hearing before such a section in the order in which the requests for hearing are received by the Board.

(2) If a claimant makes a request for a hearing before a traveling section of the Board and, by reason of limited time for the conduct of hearings by such section at the location for the requested hearing, such claimant's appeal is not scheduled for hearing or the hearing is not conducted, the Board shall afford such claimant an opportu-

nity to present the case to the Board in a hearing conducted by telephone or video connection before a section of the Board or in a videotape of a hearing conducted for the Board by Veterans' Administration adjudication personnel at a regional office of the Veterans' Administration. An audiotape or videotape of such hearing shall be included in the record of the appeal and considered by the Board in the same manner as recordings of testimony and documentary evidence are considered.

(e) In the course of any hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, an employee of the Veterans' Administration (including an employee of the Board of Veterans' Appeals), may at any time disqualify himself or herself, on the basis of personal bias or other cause, from adjudicating the claim. On the filing by a party in good faith of a timely and sufficient affidavit averring personal bias or other cause for disqualification on the part of such an employee, the Administrator, as to proceedings other than proceedings before the Board, or the Chairman, as to proceedings before the Board, shall determine the matter as part of the record and decision in the case, pursuant to regulations prescribed jointly by the Administrator and the Chairman.

(f) The transcript or recording to testimony and the exhibits, together with all papers and requests filed in the proceeding, and the decision of the Board (1) shall constitute the exclusive record for decision in accordance with section 4004(a) of this title, (2) shall be available for inspection by any party to such proceedings, or such party's authorized representative, at reasonable times and places, and (3) on the payment of a fee prescribed under section 3302(b) of this title (not to exceed the direct cost of duplication), shall be copied for the claimant or such claimant's authorized representative within a reasonable time. Such fee may be waived by the Chairman, pursuant to regulations which the Administrator shall prescribe, on the basis of the party's inability to pay or for other good cause shown.

(g) Notwithstanding section 4004(a) of this title, section 554(a) of title 5, or any other provision of law, adjudication and hearing procedures prescribed in this title and in regulations prescribed by the Administrator, as to proceedings other than proceedings before the Board, or by the Chairman, as to proceedings befoe the Board, or by the Administrator and the Chairman jointly, under this title for the purpose of administering veterans' benefits shall be exclusive with respect to hearings, investigations, and other proceedings in connection with the consideration of a claim for benefits under laws administered by the Veteran's Administration.

§4011. Notices of procedures.

In the case of any disallowance, in whole or in part, of a claim for benefits under laws administered by the Veterans' Administration, the Administrator, as to proceedings other than proceedings before the Board, or the Chairman, as to proceedings before the Board, shall, at each procedural stage relating to the disposition of such a claim, beginning with disallowance after an initial review or determination, and including the furnishing of a statement of the case and the making of a final decision by the Board, provide to the *claimant and such claimant's authorized representative, if any, written notice of the procedural rights of the claimant. Such notice shall be on such forms as the Administrator or the Chairman, respectively, shall prescribe by regulation and shall include, in easily understandable language, with respect to proceedings before the Veterans' Administration and the Board (1) descriptions of all subsequent procedural stages provided for by statute, regulation, or Veterans' Administration policy, (2) descriptions of all rights of the claimant expressly provided for in or pursuant to this chapter, of the claimant's rights to a hearing, to reconsideration, to appeal, and to representation, and of any specific procedures necessary to obtain the various forms of review available for consideration of the claim, (3) in the case of an appeal to the Board, the rights to and opportunities for a hearing provided in section 4010(d) of this title, and (4) such other information as the Administrator or the Chairman, respectively, as a matter of discretion, determines would be useful and practical to assist the claimant in obtaining full consideration of the claim.*

CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

SUBCHAPTER I—ORGANIZATION; GENERAL

Sec.

4101. Functions of Department.
4102. Divisions of Department.
4103. Office of the Chief Medical Director.
4104. Additional appointments.
4105. Qualifications of appointees.
4106. Period of appointments; promotions.
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4110. Disciplinary boards.
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4116. Defense of certain malpractice and negligence suits.
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4118. Special pay for physicians and dentists.
4119. Relationship between this subchapter and other provisions of law.
4120. Recruitment and retention bonus pay for nurses and certain other health-care personnel.
4120A. Grievances and certain disciplinary reviews.

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SUBCHAPTER I—ORGANIZATION; GENERAL

§ 4101. Functions of Department

(a) * * *

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(e) Physicians, dentists, nurses, and other health-care professionals employed by the Department of Medicine and Surgery and appointed under section 4103, 4104(1), or 4114 of this chapter [and persons appointed under section 4103(a)(8) of this chapter] are not subject to the provisions of section 413 of the Civil Service Reform

Act of 1978 or the following provisions of title 5: subchapter II of chapter 31, subchapter VIII of chapter 33, subchapter V of chapter 35, subchapter II of chapter 43, section 4507, subchapter VIII of chapter 53, and subchapter V of chapter 75.

* * * * * * *

(g)(1) The purposes of this subsection are (A) to improve and expand the capability of Veterans' Administration health-care facilities to respond with the most effective and appropriate services possible to the needs of veterans suffering from mental illness, especially from those conditions which are service-related, an (B) to advance scientific knowledge regarding mental illness, especially service-related conditions, and regarding such needs and the methods of meeting them by facilitating higher quality care for eligible veterans suffering from mental illness, especially service-related conditions, through research, the training of health personnel in the provision of health care to such veterans, and the development of improved models of clinical services for eligible veterans suffering from mental illness.

(2)(A) In order to carry out the purpose of this subsection, the Administrator, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five Veterans' Administration health-care facilities (at least one of which shall be designated before July 1, 1989) as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

(B) In designating locations for centers under subparagraph (A) of this paragraph, the Administrator, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

(C) The Administrator may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Administrator, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

(i) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such center so as to provide such residents with training in the diagnosis and treatment of mental illness;

(ii) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such center so as to provide such students with training in the diagnosis and treatment of mental illness;

(iii) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

(iv) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

(v) a policymaking advisory committee composed of appropriate mental health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

(vi) the capability to conduct effectively evaluations of the activities of such center.

(3) There are hereby authorized to be appropriated for the basic support of the research and education activities of the centers of mental illness research, education, and clinical activities established pursuant to paragraph (1) of this subsection $3,125,000 for fiscal year 1989 and $6,250,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Veterans' Administration medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

(4) Activities of clinical and scientific investigation at each center established under paragraph (1) of this subsection shall be eligible to compete for the award of funding from funds appropriated for the Veterans' Administration medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

(5) The Chief Medical Director shall ensure that research activities carried out through such centers include an appropriate emphasis on the phychosocial dimension of mental illness and on models for furnishing care and treatment to veterans suffering from mental illness.

(6) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical care carried out through such centers is disseminated throughout the Department of Medicine and Surgery through the development of programs continuing medical and related education provided through regional medical education centers under subchapter II of chapter 73 and other means.

(7) The official within the Central Office of the Department responsible for the mental health and behavioral sciences matters be responsible for the supervision of the operation of the centers established pursuant to paragraph (1) of this subsection.

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§ 4103. Office of the Chief Medical Director

(a) The Office of the Chief Medical Director shall consist of the following—

(1) * * *

* * * * * * *

[(8) Such directors of hospitals, domiciliary facilities, medical centers, and outpatient facilities as may be appointed by the Administrator upon the recommendation of the Chief Medical Director.]

[(9)] *(8)* Such other personnel as may be authorized by this chapter.

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§ 4106. Period of appointments; promotions

(a) * * *

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(h)(1) Notwithstanding subchapter I of chapter 33 of title 5, the Administrator, upon the recommendation of the Chief Medical Director, may appoint in the competitive service under title 5 individuals with a recognized degree or certificate from an accredited institution in a health-care profession or occupation who were appointed to and successfully participated in a Veterans' Administration-affiliated clinical education program.

(2) in using such authority to appoint individuals in such service, the Administrator shall apply the principles of preference for the hiring of veterans and other persons established in subchapter 1 of chapter 33 of title 5.

§ 4107. Grades and pay scales

(a) * * *

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[(c)(1) Notwithstanding any other provision of law, the per annum salary rate of each person serving as a director of a hospital, demiciliary facility, or center who is not a physician shall not be less than the salary rate which such person would receive under this section if such person's service as a director of a hospital, domiciliary facility. or center had been service as a physician in the director grade. The position of the director of a hospital domiciliary facility, or center shall not be subject to chapter 51 and subchapter III of chapter 53 of Title 5.

[(2) Notwithstanding any other provision of this title, the terms and conditions of employment of any person to whom paragraph (1) of this subsection applies shall (except as provided in paragraph (3) of this subsection) be the same as those applicable under this title to a physician serving as a director of a hospital, domiciliary facility, medical center, or outpatient facility.

[(3) Notwithstanding the provisions of section 4101(e) of this title, any person to whom paragraph (1) of this subsection applies and any person appointed under section 4103 of this title who is not eligible for special pay under section 4118 of this title shall be deemed to be a career appointee for the purpose of sections 4507 and 5384 of title 5.]

(c) Notwithstanding the provisions of section 4101(e) of this title, any person appointed under section 4103 of this title who is not eligible for special pay under section 4118 of this title shall be deemed

to be a career appointee for the purposes of sections 4507 and 5384 of title 5.

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(g)(1) * * *

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(4) In the exercise of the authority provided in paragraph (1) of this subsection with respect to personnel described in clause (B) or (C) of such paragraph to increase the rates of basic pay for any category of personnel not appointed under this subchapter, the Administrator shall, not less than [ninety] *forty-five* days prior to the effective date of a proposal increase, notify the President of the Administrator's intention to provide such an increase. If, prior to such effective date, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval, such proposed increase shall not take effect. *If, prior to such effective date, the President approves such increase, the Administrator may advance the effective date to any date not earlier than the date of the President's approval.*

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§ 4110. Disciplinary boards

(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards, each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery, to determine, upon notice and fair hearing, charges [of inaptitude, inefficiency, or misconduct] *in disciplinary actions for performance or conduct during tenure with the Veterans' Administration, except with respect to matters described in subsection (f) of this section,* of any person employed in a position provided in paragraph (1) of section 4104 of this title. The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges. *The Chief Medical Director may delegate the function of appointing a board to an employee of the Department of Medicine and Surgery who is not involved in deciding whether or not to file charges against the employee and who is not subordinate to any official involved in so deciding.*

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(d) A disciplinary board, when in its judgment charges are sustained shall recommend to the Administrator [suitable disciplinary action, within limitations prescribed by the Administrator, which shall include reprimand, suspension without pay, reduction in grade, and discharge from the Department of Medicine and Surgery of such person.] *that the proposed disciplinary action be sustained or modified within limitations prescribed by the Administrator.* The Administrator shall either approve the recommendation of the board, approve such recommendation with modification or exception, approve such recommendation and suspend further action at the time, or disapprove such recommendation. The Administrator shall cause to be executed such action as the Administrator approves. The decision of the Administrator shall be final.

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(f)(1) An employee against whom disciplinary action consisting of a suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment is proposed is entitled to—

(A) an advance written notice stating the specific reasons for the proposed action;

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(C) be represented by an attorney or other representative; and

(D) a written decision and the specific reasons therefor at the earliest practicable date.

(2) Actions taken under paragraph (1) of this subsection shall be subject to review under either the provisions of section 4120A of this title, in the case of employees appointed under authority of this title who are members of a bargaining unit recognized under chapter 71 of title 5, or an agency review procedure to be established by the Administrator, in the case of such employees who are not members of such a unit. Any such agency review procedure established by the Administrator shall include—

(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the agency;

(C) a prompt report of the findings and recommendations by the impartial examiner; and

(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the agency on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.

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§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies or internships

(a)(1) The Administrator, upon the recommendation of the Chief Medical Director, may employ, without regard to civil service or classification laws, rules, or regulations—

(A) physicians, dentists, podiatrists, optometrists, nurses, physician assistants, expanded-function dental auxiliaries, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, *pharmacists, occupational therapists,* dietitians, social workers, librarians, and other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs) on a temporary full-time, part-time, or without compensation basis; and

(B) physicians, dentists, podiatrists, optometrists, nurses, physician assistants, expanded-function dental auxiliaries, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, *pharmacists and occupational therapists,* and other professional and technical personnel on a fee basis.

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(3)(A) * * *

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(D) During any period during which the Administrator is exercising the authority of only section 4106 (a) and (g)(1) of this title in connection with the appointment, under section 4104(3) of this title, of personnel in [the category of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses—] *a category of personnel described in such section 4104(3)—*

(i) the Administrator may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Chief Medical Director finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 4104 of this title; and

(ii) part-time appointments of personnel in such category may be for periods of more than one year.

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§ 4120A. Grievances and certain disciplinary reviews

(a)(1) For the purpose of resolving (A) grievances of employees appointed under authority of this title who are members of a bargaining unit recognized under chapter 71 of title 5, or (B) except as prescribed in paragraph (2), disciplinary actions as described in subsection 4110(f)(1) of this title involving such employees, the Administrator shall authorize review of agency actions on grievances or disciplinary actions under the procedures negotiated under the authority of chapter 71 of title 5.

(2) In any matter, as determined by either party, involving disciplinary actions involving questions of clinical competence, the individual selected to arbitrate the matter must be qualified as an arbitrator and also be qualified as a physician, dentist, nurse, or otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues.

(b) For the purpose of resolving grievances of supervisors and employees appointed under authority of this chapter who are not members of a bargaining unit recognized under chapter 71 of title 5, the Administrator shall authorize review of agency action on such grievances pursuant to an agency review procedure as described in section 4110(f)(2)

(c) For the purposes of this section, the term "grievance" means a matter of concern by an employee appointed under this title (as may be negotiated under authority of chapter 7 of title 5) with respect to

his or her employment but does not include matters similar to those excluded from grievance procedures under chapter 71 of title 5.

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CHAPTER 76—HEALTH PROFESSIONALS EDUCATIONAL ASSISTANCE PROGRAM

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SUBCHAPTER II—SCHOLARSHIP PROGRAM

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§ 4312. Eligibility; application; agreement

(a)(1) * * *

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(b)(1) * * *

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(5) In selecting applicants for the Scholarship Program, the Administrator [shall give priority to the applications of individuals who will be entering their final year in a course of training.] *shall—*

(A) give priority to the applications of individuals who will be entering their final year in a course of training; and

(B) ensure an equitable allocation of scholarships to persons enrolled in their second year of a program leading to an associate degree in nursing.

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PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

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SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, ANS HOSPITAL CARE

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§ 5033. Authorization of appropriations

(a) There are hereby authorized to be appropriated such sums as are necessary to carry out this subchapter through September 30, [1989.] *1992.* Sums appropriated pursuant to this section shall be used for making grants to States which have submitted, and have had approved by the Administrator, applications for carrying out the purposes and meeting the requirements of this subchapter.

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SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

§ 5051. Statement of congressional purpose

It is the purpose of this subchapter to improve the quality of hospital care and other medical services provided veterans under this title, by authorizing the Administrator to enter into agreements with medical schools, [hospitals,] *health-care facilities,* and research centers throughout the country in order to receive from and share with such medical schools, [hospitals,] *health-care facilities,* and research centers the most advanced medical techniques and information, as well as certain specialized medical resources which otherwise might not be feasibly available or to effectively utilize other medical resources with the surrounding medical community, without diminution of services to veterans. Among other things, it is intended, by these means, to strengthen the medical programs at those Veterans' Administration hospitals which are located in small cities or rural areas and thus are remote from major medical centers.

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§ 5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans' Administration [hospitals and other hospitals (or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools or clinics in the medical community:] *health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools:*

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facilities; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

[The Administrator may determine the geographical limitations of a medical community as used in this section.]

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a [charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment.] *methodolgy that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved.* Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical [appropriation.] *appropriation and to funds that have been allotted to the facility that furnished the resource involved.*

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CHAPTER 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

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SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE VETERANS' ADMINISTRATION TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

5091. Declaration of purpose.
5092. Definition.
5093. Grants.
5094. Authorization of appropriations.

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SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE VETERANS' ADMINISTRATION TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

§ 5091 Declaration of purpose

The purpose of this subchapter is to authorize the Administrator to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Veterans' Administration, designed to coordinate, improve, and expand the training of professional and technical allied health and paramedical personnel, and *(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)* to assist in developing and evaluating new health careers, interdisciplinary approaches and career advancement opportunities, so as to improve and expand allied and other health manpower utilization.

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§ 5094. Authorization of appropriations

(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1989 and 1990 and $6,000,000 for each of fiscal years 1991 and 1992.

(b)(1) Sums appropriated pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated.

(2) Of the funds appropriated pursuant to the authorization in subsection (2) of this section, not to exceed 10 percent may be expended for the purpose described in section 5096(2) of this title.

SUBCHAPTER IV—EXPANSION OF VETERANS' ADMINISTRATION HOSPITAL EDUCATION AND TRAINING CAPACITY

§ 5096. Expenditures to remodel and make special allocations to Veterans' Administration hospitals for health manpower education and training

Out of funds appropriated to the Veterans' Administration pursuant to the authorization in section [5082] *5094* of this title, the Administrator may expend such sums as the Administrator deems necessary, not to exceed [30 per centum] *10 percent* thereof, for [(1) the necessary extension, expansion, alteration, improvement, remodeling, or repair of Veterans' Administration buildings and structures (including provision of initial equipment, replacement of obsolete or worn-out equipment, and, where necessary, addition of classrooms, lecture facilities, laboratories, and other teaching facilities) to the extent necessary to make them suitable for use for health manpower education and training in order to carry out the purpose set forth in section 4101(b), and (2)] special allocations to Veterans' Administration hospitals and other medical facilities for the development or initiation of improved methods of education and training which may include the development or initiation of plans which reduce the period of required education and training for health personnel but which do not adversely affect the quality of such education or training.

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VETERANS HEALTH PROGRAMS EXTENSION AND IMPROVEMENT ACT OF 1979

(Public Law 96-151, December 20, 1979, amended by section 401 of Public Law 97-72, November 3, 1981; and section 8 of Public Law 98-542, October 24, 1984)

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TITLE III—VETERANS' ADMINISTRATION MEDICAL PERSONNEL AMENDMENTS AND MISCELLANEOUS PROVISIONS

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AGENT ORANGE STUDY

SEC. 307. (a)(1)(A) The Administrator of Veterans' Affairs shall design a protocol for and conduct an epidemiological study of any long-term adverse health effects in humans of service in the Armed Forces of the United States in the Republic of Vietnam during the period of the Vietnam conflict as such health effects may result from exposure to phenoxy herbicides (including the herbicide known as Agent Orange) and the class of chemicals known as the dioxins produced during the manufacture of such herbicides. In conducting such study, the Administrator may expand the scope of the study to include an evaluation of any long-term adverse health effects in humans of such service as such health effects may result from other factors involved in such service, including exposure to other herbicides, chemicals, medications, or environmental hazards or conditions. The Administrator may also include in the study an evaluation of the means of detecting and treating adverse health effects found through the study.

(B) The Administrator shall also conduct a comprehensive review and scientific analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from exposure to phenoxy herbicides (including the herbicide known as Agent Orange) and the class of chemicals known as the dioxins produced during the manufacture of such herbicides. In conducting such review and analysis, the Administrator may expand the scope of such review and analysis to include a review and analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from other factors involved in service in the Armed Forces of the United States in the Republic Vietnam during the period of the Vietnam conflict or in other comparable situations involving one or more of the factors described in the second sentence of subparagraph (A). The Administrator may also include a review and analysis of the means of detecting and treating adverse health effects found through any study covered by either such review and analysis.

(2)(A)(i) The study conducted pursuant to paragraph (1) shall be conducted in accordance with a protocol approved by the Director of the Office of Technology Assessment.

(ii) The Director shall monitor the conduct of such study in order to assure compliance with such protocol.

(B)(i) Concurrent with the approval or disapproved of any protocol under subparagraph (A)(i), the Director of the Office of Technology Assessment shall submit to the appropriate committees of the Congress a report explaining the basis for the Director's action in approving or disapproving such protocol and providing the Director's conclusions regarding the scientific validity and objectivity of such protocol.

(ii) In the event that the Director has not approved such protocol during the one hundred and eighty days following the date of the enactment of this Act, the Director shall (I) submit to the appropriate committees of the Congress a report describing the reasons why the Director has not given such approval, and (II) submit an update report on such initial report each sixty days thereafter until such protocol is approved.

(C) The Director shall submit to the appropriate committees of the Congress, at each of the times specified in the second sentence of this subparagraph, a report on the Director's monitoring of the conduct of such study pursuant to subparagraph (A)(ii). A report under the preceding sentence shall be submitted before the end of the six-month period beginning on the date of the approval of such protocol by the Director, before the end of the twelve-month period beginning on such date, and annually thereafter until such study is completed or terminated.

(3) The study conducted pursuant to paragraph (1) shall be continued for as long after the submission of the first report under subsection (b)(2) as the Administrator may determine reasonable in light of the possibility of developing through such study significant new information on the long-term adverse health effects of exposure to dioxins.

(b)(1) Not later than twelve months after the date of the enactment of this Act, the Administrator shall submit to the appropriate committees of the Congress a report on the literature review and analysis conducted under subsection (a)(1).

(2) Not later than twenty-four months after the date of the approval of the protocol pursuant to subsection (a)(2)(A)(i) and annually thereafter, the Administrator shall submit to the appropriate committees of the Congress a report containing (A) a description of the results thus far obtained under the study conducted pursuant to such subsection, and (B) such comments and recommendations for administrative or legislative action, or both, as the Administrator considers appropriate in light of such results.

(3) Immediately after the submission of each report under paragraph (2), the Administrator, based on the results described in such report and the comments and recommendations included therein and any other available pertinent information, shall evaluate the need for any amendments to regulations, prescribed pursuant to section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, for the resolution of claims for service connection based on the exposure specified in subsection (a)(1)(A) of such section. To the extent that the Administrator determines that any amendments to such regulations are needed, the Administrator, not later than 90 days after such submission, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.

(4) The first report submitted under paragraph (2) shall include the Administrator's recommendation, and reasons therefor, with respect to whether the authority to provide care and services under and by virtue of section 610(a)(5) of title 38, United States Code, should be extended beyond the expiration period specified by section 610(e)(3) of such title.

(c)(1) Not later than 60 days after the publication of any report by, or at the request of, the entity responsible for carrying out the study under section (a)(1)(A) setting forth results and findings from such study—

(A) the panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to dioxin, established pursuant to section 6(d)(2) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542; 38 U.S.C. 354 note), shall review and evaluate such results and findings, and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth such panel's evaluation of such results; and

(B) the Director shall review and evaluate such results and findings and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of

Representatives, setting forth the Director's evaluation of such results.

(2)(A) Not later than 60 days after receiving both of the reports under paragraph (1), the Administrator, after consideration of the evaluations set forth in such reports, the comments and recommendations, if any, included therein, and any other available pertinent scientific information, shall evaluate the need for any amendments to regulations prescribed pursuant to section 5 of such Act and shall advise the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's decision, and the reasons therefor, regarding the need for any such amendments.

(B) To the extent that the Administrator determines under subparagraph (A) that any amendments to such regulations are needed, the Administrator, not later than 120 days after receiving the reports under paragraph (1), shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.

[(c)] *(d)* For the purpose of assuring that any study carried out by the Federal Government with respect to the adverse health effects in humans of exposure to dioxins is scientifically valid and is conducted with efficiency and objectivity, the President shall assure that—

(1) the study conducted pursuant to subsection (a) is fully coordinated with studies which are planned, are being conducted, or have been completed by other departments, agencies, and instrumentalities of the Federal Government and which pertain to the adverse health effects in humans of exposure to dioxins; and

(2) all appropriate coordination and consultation is accomplished between and among the Administrator and the heads of such departments, agencies, and instrumentalities that may be engaged, during the conduct of the study carried out pursuant to subsection (a), in the design, conduct, monitoring, or evaluation of such dioxin-exposure studies.

[(d)] *(e)* There are authorized to be appropriated such sums as may be necessary for the conduct of the study required by subsection (a).

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VETERANS' HEALTH CARE AMENDMENTS OF 1983

(Public Law 98-160, November 21, 1983)

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TITLE VI—RADIATION EXPOSURE STUDY AND GUIDE

RADIATION EXPOSURE STUDY AND GUIDE

SEC. 601. (a)(1)(A) * * *

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(6)(A) Not later than 60 days after the publication of any report by, or at the request of, the entity responsible for carrying out the

study under section (a)(1)(A) setting forth results and findings from such study—

(i) the panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to ionizing radiation, established pursuant to section 6(d)(2) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542; 38 U.S.C. 354 note), shall review and evaluate such results and findings, and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth such panel's evaluation of such results; and

(ii) the Director shall review and evaluate such results and findings and provide a written report to the Administrator and the Committees on Veterans' Affairs of the Senate and House of Representatives, setting forth the Director's evaluation of such results.

(B)(i) Not later than 60 days after receiving both of the reports under subparagraph (A), the Administrator, after consideration of the evaluations set forth in such reports, the comments and recommendations, if any, included therein, and any other available pertinent scientific information, shall evaluate the need for any amendments to regulations prescribed pursuant to section 5 of such Act and shall advise the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's decision, and the reasons therefor, regarding the need for any such amendments.

(ii) To the extent that the Administrator determines under division (i) that any amendments to such regulations are needed, the Administrator, not later than 120 days after receiving the reports under subparagraph (A), shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.

[(6)] *(7)* A contract to carry out study under paragraph (1)(A) may not be entered into unless (A) appropriations for payments under the contract have been provided in advance, or (B) the contract provides that the obligation of the United States to make payments under the contract is contingent upon the availability of funds appropriated for the making of such payments.

[(7)] *(8)* There are authorized to be appropriated such sums as may be necessary for the conduct of study under subsection (a)(1)(A).

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VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS ACT

(Public Law 98–542, October 24, 1984)

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ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS

SEC. 6. (a) * * *

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(e)(1) Not later than 60 days after receiving a report from the Council under subsection (d)(3) recommending any amendments to the regulations prescribed pursuant to section 5, the Administrator, after consideration of the findings and evaluations set forth in such report, the comments and recommendations, if any, included therein, and any other available pertinent scientific information, shall evaluate the need for any such amendments and shall advise the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's decision, and the reasons therefor, regarding the need for any such amendments.

(2) To the extent that the Administrator determines under paragraph (1) that any amendments to such regulations are needed, the Administrator, not later than 120 days after receiving such report, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.

[(e)] *(f)* The Administrator shall designate one of the members to chair the Committee and another member to chair the Council.

[(f)] *(g)* The Administrator shall determine the terms of service and pay and allowances of members of the Committee, except that a term of service of any members may not exceed three years. The Administrator may reappoint any member for additional terms of service.

[(g)] *(h)* The Administrator shall provide administrative support services and fiscal support for the Committee.

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Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

(Public Law 99-576, October 28, 1986)

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TITLE II—HEALTH CARE AND MEDICAL FACILITIES

Part A—Health-Care Programs

SEC. 201. RESPITE CARE.

(a) * * *

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(b) Report.—If the Administrator of Veterans' Affairs furnishes respite care under section 620B of title 38, United States Code (as added by subsection (a)—

(1) the Administrator shall conduct an evaluation of the health efficacy and cost-effectiveness of furnishing such care; and

(2) not later than February 1, [1989,] *1990,* shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(A) the results of such evaluation; and

(B) any plan for administrative action, and any recommendation for legislation, that the Administrator considers appropriate to include in the report.

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INTERNAL REVENUE CODE OF 1986

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SUBTITLE F—PROCEDURE AND ADMINISTRATION

CHAPTER 61—INFORMATION AND RETURNS

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SUBCHAPTER B—MISCELLANEOUS PROVISIONS

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§ 6103. Confidentiality and disclosure of returns and return information

(a) * * *

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(l) **Disclosure of returns and return information for purposes other than tax administration.—**

(1) * * *

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(7) Disclosure or return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of [1977.—] ***1977 or to the Veterans' Administration.—***

(A) Return information from Social Security Administration.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from Internal Revenue Service.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagaph (D).

(D) Programs to which rule applies.—The program to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food Stamp Act of 1977; [and]

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law [93-66.] *93-66); and*

(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or any other law administered by the Veterans' Administration;

(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

(III) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of such title; and

(IV) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total; except that, in such cases, only wages and self-employment information may be disclosed.

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VETERANS' BENEFITS AND SERVICES ACT OF 1988

(Public Law 100-322, May 20, 1988)

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TITLE II—HEALTH-CARE ADMINISTRATION AND PERSONNEL MATTERS

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PART D—REPORTS

SEC. 231. STUDY OF PAY AND OTHER PERSONNEL MANAGEMENT PRACTICES.

(a) * * *

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[(d) REPORTS.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the study required by subsection (a). The report shall contain—

[(1) the determinations of the Administrator under subsections (a) and (b); and

[(2) any planned administrative actions, and any recommendations for legislation, that the Administrator considers appropriate to include in the report on the basis of the results of the study.]

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TITLE IV—VETERANS' ADMINISTRATION MANAGEMENT AND ADMINISTRATION

PART A—PROCUREMENT POLICY

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SEC. 402. STANDARIZATION OF MEDICAL AND PHARMACEUTICAL ITEMS.

Not later than October 1, 1989, the Administrator shall develop and fully implement an agency-wide plan for the cost-effective standardization, in a manner consistent with the effective furnishing of health-care services, of [medical and pharmaceutical items] *health-care items (as defined in section 5025(e)(1) of title 38, United States Code)* procured by the Veterans' Administration. The plan shall provide for the procurement of generic pharmaceutical items when such procurement is more economical than procurement of a name-brand pharmaceutical item unless the Chief Medical Director of the Veterans' Administration (1) determines, after consultation with the Commissioner of the Food and Drug Administration, that an equivalent generic item is not available, or (2) determines that the procurement of a name-brand item is necessary in the interests of effective patient care.

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